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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the situation of human rights in Myanmar, prepared by Mr. Paulo Sergio Pinheiro, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 2001/15

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Executive summary

The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar was established by the Commission it its resolution 1992/58 and extended most recently in resolution 2001/15 (approved by the Economic and Social Council in its decision 2001/ 251). In its resolution the Commission requested the Special Rapporteur to report to the General Assembly at its fifty-sixth session and to the Commission at its fifty-eighth session. The Special Rapporteur accordingly submitted an interim report to the General Assembly (A/56/312). The present report is based upon the findings of his first fact-finding mission to Myanmar undertaken in October 2001 and information received by him up to 15 December 2001 and is to be read in conjunction with his interim report.

The Special Rapporteur welcomes several positive initiatives addressing some of the human rights concerns of the Commission in which the Government of Myanmar has been engaged since the start of the ongoing confidence-building contacts with Daw Aung San Suu Kui in October 2000 under the auspices of the mandate of the Special Envoy of the United Nations Secretary-General for Myanmar. These include the operation of the governmental Committee on Human Rights; the dissemination of human rights information for the police and public officials; releases of political detainees, including elected members of Parliament; the reopening of offices of legal political parties; attention to conditions in prisons and continued international monitoring and cooperation in this area; efforts to address the problem of forced labour and cooperation in this regard with the International Labour Organization (ILO); peace-building and development work in border areas through ceasefire agreements with armed groups; promotion of reform of higher education and combating the spread of HIV/AIDS.

While welcoming the above-mentioned developments, the Special Rapporteur is mindful that progress is fragile given the fact that human rights violations in Myanmar occur within the context of two related and overlapping factors: long-standing insurgencies, ethnic and otherwise, and the suppression of the re-emerging democracy movement since 1988. Serious human rights violations still reportedly occur in the country, especially in areas of conflict between the army and armed groups, but on a different scale than before; this remains to be assessed by the Special Rapporteur, in view of a changing context in the country marked by ceasefires and the gradual opening of the Government to the outside world. The challenge now, besides calling for more international awareness of what is wrong, is how to encourage the confidence-building process without ignoring the large-scale human rights violations and seeking to eliminate them through change.

In concrete terms, the report calls for bolder moves to carry forward the present process, which should include as a matter of priority the following steps in the areas addressed in the report:

(a) The enhancement of the country's human rights capacity to an extent that corresponds to the need for the prevention and monitoring of human rights violations and for the State agents involved to be held accountable;

(b) The full and unconditional release of all political prisoners;

(c) The substantial enlargement of the space in which civil society, political parties and ethnic groups can function by creating non-discriminatory conditions for the exercise of basic political freedoms;

(d) The equal application of minimum standards for the treatment of prisoners, addressing at the same time the pockets of vulnerability among the prison population such as the sick, the elderly, juveniles and women, especially those with children and who are pregnant;

(e) The allocation of more resources to the reform of the education sector, in particular tertiary education, and better targeting of investments to address critical areas such as teacher training and strengthening evenly the material base of universities and institutes;

(f) Broad-based social mobilization and advocacy for preventive and curative action against HIV/AIDS integrated into a national comprehensive and sustained campaign led by the highest levels of authority and supported by appropriate international assistance;

(g) Broadening the focus of efforts to combat violence against women to cover violence in the community, particularly in areas of conflict between the army and armed groups where the most serious forms of violence against women are reported;

(h) The use of maximum restraint in military activities in respect of international humanitarian law relating to the protection of civilians and prisoners, and consideration of alternative avenues to resolving differences, i.e. through political dialogue in the mutual respect of their rights by all parties to the conflict: the Government, its armed forces, and armed opposition groups;

(i) Addressing the humanitarian situation more adequately, with the commitment of the Government going hand in hand with the involvement of the National League for Democracy (NLD) in the planning and managing of international humanitarian assistance.

The report concludes that it is time for the Government of Myanmar to start a substantive dialogue with the leaders of the NLD and all other political parties and ethnic nationalities, since only through the building of an all-inclusive, accountable and transparent process will it be possible to preserve and consolidate peace and national reconciliation and to restore democracy.

Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, established by the Commission in its resolution 1992/58 of 3 March 1999 and extended most recently in resolution 2001/15 of 18 April 2001 (approved by the Economic and Social Council in its decision 2001/ 251 of 24 July 2001), requires the Special Rapporteur to establish direct contact with the Government and people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian Government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar.

2. In its resolution 2001/15, the Commission requested the Special Rapporteur to report to the General Assembly at its fifty-sixth session and to the Commission at its fifty-eighth session, keeping a gender perspective in mind when seeking and analysing information (para. 7). The Special Rapporteur accordingly submitted an interim report to the General Assembly (A/56/312). The present report is based upon the findings of his first fact-finding mission to Myanmar undertaken in October 2001 and information received by him up to 15 December 2001 and is to be read in conjunction with his interim report.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Fact-finding mission

1. Methodology

3. The Special Rapporteur is of the view that it would be impossible to tackle all human rights issues and problems in Myanmar at the same time. Accordingly, he selected for his first fact-finding mission issues which are of priority to his mandate and can be documented easily (given the limited time of the visit), and in a manner which wil' maintain dialogue and build confidence with the Government and develop a process of consultation and partnership with other relevant players. He also took into consideration the areas of concern that are already understood by the Government and are among its own priorities, which thus could be addressed in a spirit of cooperation. At the same time, the Special Rapporteur sought to look at the issues that concern the majority of the population and are in the nature of long-term structural problems. He thus focused on establishing an initial framework of cooperation and operating principles, visiting prisons and labour camps, interviewing political and other detainees confidentially, beginning to assess basic security conditions and the exercise of fundamental civil and political rights, and starting to look into the basic rights to health and education.

4. The Special Rapporteur recognizes the urgency in improving the situation of human rights on many fronts. However, he is of the view that given the limited resources of his mandate and notwithstanding the need to act on behalf of the urgent and best interests of the victims of human rights violations, to have a positive impact his mandate requires a long-term

approach, each mission focusing on selected issues to be investigated and documented. Each new visit will update issues looked at previously and address new ones, thus allowing sufficient time to ensure their proper assessment both in terms of the scale of the problem and the quality of the documentation.

5. A basic requirement for this mandate is consultation and dialogue with the Government, political parties, including those of ethnic nationalities, and the society at large. This is what the Special Rapporteur has initiated in order to build a constructive partnership with all those, both inside and outside Myanmar, who aspire to contribute towards promoting and protecting human rights and the well-being of the people in the country.

6. With regard to the protection of witnesses and sources of information, the Special Rapporteur had obtained from the Government written guarantees prior to the mission as well as repeated assurances during the mission that no one would be subject to any form of pressure, intimidation or violence before, during or after the mission. This was complemented by an indirect approach whereby the Special Rapporteur sought information from the least vulnerable but knowledgeable sources in the country such as United Nations agencies, aid organizations, diplomats and religious leaders.

2. Programme

7. The first fact-finding mission of the present Special Rapporteur was planned to comprise a one-day consultative visit to Singapore on 8 October 2001 and a 12-day proper fact-finding in Myanmar from 9 to 20 October 2001, followed by a 6-day additional fact-finding in Thailand from 21 to 26 October 2001. While in Singapore, the Special Rapporteur met with Mr. Bilahari Kausikan, Second Permanent Secretary of the Ministry for Foreign Affairs, as well as academics, journalists and individuals knowledgeable about the situation of human rights in Myanmar.

8. During his stay in Yangon (9-12 and 17 October), the Special Rapporteur had an intensive programme, entirely defined by him, of 31 meetings (see annex I). Among them, was an important meeting with Lieutenant-General Khin Nyunt, Secretary-1 of the State Peace and Development Council (SPDC) who assured the Special Rapporteur of the full cooperation of the SPDC and invited him to go to any place he wanted and meet anyone he wished, which he did. The Secretary-1 stated that he wanted to make the mission a success and stressed that the SPDC was genuinely committed to improving the well-being of the population. He acknowledged the need to improve human rights and engage in political transition now that peace had been achieved in several parts of the country and development was taking place. He expressed concern at the lack of understanding outside the country about the progress achieved in those areas. Among other senior government officials, the Special Rapporteur met with the Ministers for Foreign Affairs, Home Affairs, Labour, Health, and Education, the Chief Justice, the Attorney-General, the Chairman and members of the Human Rights Committee, and the Deputy Minister for Foreign Affairs. He also visited educational, religious, academic and other institutions.

9. The Special Rapporteur was received privately by Daw Aung San Suu Kyi, Secretary-General of the National League for Democracy (NLD). He also had meetings with representatives of groups having entered into a ceasefire with the Government (hereafter ceasefire groups) and ethnic nationality parties that are members of the Committee Representing the People's Parliament (CRPP).[1] He met as well with representatives of 6 United Nations agencies, 24 foreign embassies, 11 international non-governmental organizations (NGOs) and the International Committee of the Red Cross (ICRC), the delegate of the Centre for Humanitarian Dialogue, a number of representatives of the local and international business communities and media agencies.

10. During field trips (13-16 October) to several regions of the country chosen by the Special Rapporteur, the mission team visited Lashio (Shan State), a Wa ceasefire area (town of Namtit), the new border town of Muse, the Lashio prison, Mandalay, the NLD office there, the Mandalay central prison, Hton-Bo labour camp and a university in Sagaing Division.

11. On 17 October, the visit had to be suspended owing to the sudden illness of the Special Rapporteur. As a consequence, visits to Kachin State, Insein prison, a labour camp near Yangon and other higher education institutions were cancelled, as were some interviews with recently released political prisoners and the Thai part of the mission. At the request of the Special Rapporteur, his team stayed on in Yangon until 20 October, as originally planned, and met with the NLD Central Executive Committee at its headquarters, as well as other international NGOs and the United Nations Resident Coordinator.

12. The Special Rapporteur received full and unhindered cooperation on the part of the Government of Myanmar during the mission, for which he expresses his sincere appreciation. All of his specific requests for meetings were met and his movements in the country were facilitated appropriately. During his visit he enjoyed freedom of movement and freedom of access to private persons and others of interest. The documentation and information requested were provided promptly and fully. The Special Rapporteur also thanks very warmly the medical staff of the Mandalay General Hospital for their competent care and kind attention.

B. Other activities

13. After his fact-finding mission to Myanmar, the Special Rapporteur prepared a brief oral report on his initial impressions and findings, which he presented to the General Assembly in his statement on 9 November 2001. Accordingly, the present report elaborates in more detail the points referred to in the statement, in light of information received during and after the mission.

14. While at United Nations Headquarters to present his report, the Special Rapporteur met with several representatives of the Myanmar authorities, other Governments, NGOs, and also private individuals who imparted their views and information on the situation of human rights in Myanmar.

15. Upon his return from the mission the Special Rapporteur wrote two letters to the Government of Myanmar regarding his cooperation with it in the implementation of his mandate. In his letter of 30 October 2001 addressed to the Minister for Foreign Affairs, he stated:

"This mission was the first step in a process of opening that I hope will continue and amplify .... This was the first opportunity to assess human rights conditions in an objective and impartial manner. I am encouraged by what I have seen so far and by the spirit of cooperation that I have encountered. I regret that we had to suspend this very important first step but I am glad to report that I am feeling better now and hope to return to Myanmar soon ...;"

"I regard my mission as a partnership with Myanmar, your Government, [and] opposition and civil society, to analyse problems together, look for and discuss solutions and mobilize international support for implementing them. I believe that this is the best way for me to contribute to the promotion and protection of human rights in Myanmar, but that I can only make it a success if I can count on your cooperation. Again, my first mission is an encouragement to me."

16. In his letter of 7 December 2001 addressed to the Permanent Representative of Myanmar to the United Nations Office at Geneva, the Special Rapporteur reiterated his wish to return to Myanmar to pursue his fact-finding mandate and indicated that he would like it to be in February 2002. On the same day, the Special Rapporteur had a follow-up meeting with the Permanent Representative in Geneva.

II. HUMAN RIGHTS-RELATED DEVELOPMENTS

17. In his interim report and statement to the fifty-sixth session of the General Assembly, the Special Rapporteur welcomed the fact that the Government of Myanmar had been supporting several positive initiatives by way of addressing some of the concerns of the Commission on Human Rights since its confidence-building contacts with the NLD leader in October 2000 under the auspices of the mandate of the Special Envoy of the United Nations Secretary-General for Myanmar. These include the operation of the governmental Committee on Human Rights; the dissemination of human rights information for the police and public officials; the releases of political detainees, including elected members of parliament. The re-opening of offices of legal parties; attention to conditions in prisons and continued international monitoring and cooperation in this area; efforts to address the problem of forced labour and cooperation in this regard with the International Labour Organization (ILO); peace-building and development work in border areas through ceasefire agreements with armed groups; promotion of reform of higher education; and combating the spread of HIV/AIDS. Progress and remaining problems in the above-mentioned areas are addressed in the following paragraphs.

18. It should be remembered that human rights violations in Myanmar occur within the context of two related and overlapping factors: long-standing insurgencies, ethnic and otherwise, and the suppression of the re-emerging democracy movement since 1988. Serious human rights violations still reportedly occur in the country, especially in areas of conflict between the army and armed groups, but on a different scale than before; this remains to be assessed by the Special Rapporteur, in view of the changing context marked by ceasefires and the gradual opening-up of the Government to the outside world. The challenge now, besides calling for more international attention to what is wrong, is how to deal with the confidence-building process and the slow opening: encouraging and fostering it without ignoring the large-scale human rights violations and seeking to remedy them through structural change.

A. Activities of the governmental Committee on Human Rights

19. During his mission the Special Rapporteur had the opportunity to continue his interaction with the Chair and members of the Human Rights Committee (HRC), whom he met previously during his exploratory mission to Yangon in April 2001. The HRC is chaired by the Minister for Home Affairs and has eight subcommittees composed mainly of government officials. The Special Rapporteur was informed that in the future its composition will be changed to include more people from the non-governmental sector and its Chair will be a civilian. It was explained that the HRC was an interim body leading to the National Human Rights Commission (NHRC), established in accordance with the Paris Principles, which is seen as a key component of the national action plan in the area of human rights. The plan would be drafted on the basis of human rights research initiated by various subcommittees of the HRC. Its preparation and implementation would be a two-phase process: namely, the period before its establishment and the period after. According to government interlocutors, other main components of the plan during the first phase will include: (i) the training of national specialists in the area of human rights; (ii) the dissemination of human rights through, inter alia, training activities and publications; and (iii) preparation for accession to more international human rights treaties. The Special Rapporteur took note that the steps for the second phase would be based on the outcome and decisions of the national human rights workshop and the Vienna Declaration and Programme of Action.

20. The HRC has carried out a number of activities since the Special Rapporteur's previous visit. One of them was the preparation of new human rights awareness tools including two books designed for policy-makers (What Are Human Rights? and Human Rights Principles and Practices: A Global Perspective) and the translation of an Australian human rights manual for use in future workshops. Other activities included human rights workshops in Yangon and Mandalay. The workshops concentrated not only on basic human rights principles and practices but also on thematic areas with a special focus on the Myanmar context, such as women's rights, child rights, forced labour, and human rights and the police. Thus, one of the last workshops held in Yangon in October 2001, "The Human Rights in Law Enforcement", was specifically targeted at the police. The issues dealt with included an introduction to human rights law; human rights standards applicable in the area of law enforcement, including arrest, detention, prevention and detection of crime; use of force and firearms; and command and management training. In November 2001, there was a seminar on child rights. In January 2002, it is planned to convene a workshop on economic, social, and cultural rights, the first of its kind in Myanmar, with the participation of representatives of the academic and non-governmental community.

21. There have been 11 human rights workshops in Myanmar thus far, held with the support of the Government of Australia and corporate funding (i.e. from multinational oil companies). The Special Rapporteur understands that more corporate actors have indicated support for future training activities. All the workshops relied not only financially but also substantively on external support, with the exception of some recent ones where national instructors who had been trained at previous workshops worked together with international resource persons. He was told that in the future, a main focus would be on the training of trainers with a view to developing a core of national human rights specialists who would then conduct follow-up training activities in order to reach not only policy-makers and government officials, but also the general public.

22. The Special Rapporteur was informed that capacity-building through a series of successive workshops was appreciated by the Government and benefited, inter alia, the research activities of the HRC. He understands that the HRC subcommittees are currently engaged in the study of existing international human rights standards and conducting research in their respective areas in particular the compatibility of national laws and practices. Thus, the subcommittee on child rights was coordinating the preparation of the second periodic report on the implementation of the Convention on the Rights of the Child and was studying the Optional Protocol to the Convention on children in armed conflict.

23. The Special Rapporteur commends all these initiatives aimed at building human rights capacity for government officials and the intention to establish a national human rights institution within the framework of the Paris Principles. However, he would like to point out that another basic requirement for the promotion and protection of human rights is the freedom to organize, participate in and express oneself through autonomous civil society organizations. The Special Rapporteur hopes these efforts to enhance human rights capacity will translate into the prevention and monitoring of human rights violations and that State agents involved in such violations will be held accountable.

B. Civil and political rights

1. Freedom of political association

24. During his fact-finding mission, the Special Rapporteur attempted to obtain the most accurate and up-to-date information on the situation of political parties in Myanmar. In his effort to do so, he met with the NLD top leadership, including Secretary General Daw Aung San Suu Kyi, Chairman U Aung Shwe, Vice-Chairman U Tin U, and the Secretary and Spokesperson U Lwin. He also met with representatives of ethnic nationality parties that are members of the CRPP. The Special Rapporteur's team also had 2½ hours of discussion at NLD headquarters with the party's Central Executive Committee. The team also visited the NLD office in Mandalay and met there with a large group of NLD members (45) representing the Mandalay Division Organizing Committee and 11 townships (North-West, Amarapura, Sintgaing, Dadar, Pathaingyi, North-East, South-East, South-West, Myitthar, Yamethin, Thabeikkyin), who had gathered on that day for their regular meeting.

25. Of the 200 parties that registered for the 1990 elections under the Political Parties Registration Law (State Law and Order Restoration Council (SLORC) Law No. 4/88 of 27 September 1988), only 10 remain registered with the Multi-Party Democracy General Elections Commission in 2001. They include the NLD, the National Unity Party (NUP), and eight others representing ethnic nationalities: the Kokang Democracy and Unity Party (KDUP), the Union Kayin League (UKL), the Union Pao National Organization (UPNO), the Myo or Khami National Solidarity Organization (MKNSO), the Shan National League for Democracy (SNLD), the Shan State Kokang Democratic Party (SSKDP), the Lahu National Development Party (LNDP) and the Wa National Development Party (WNDP).

26. All the remaining parties were de-registered by the Multi-Party Democracy General Elections Commission quite some time ago and accordingly cannot carry out political activities. Many of those parties seem to have only a vague knowledge of the grounds and procedures on

the basis of which this happened.[2] The Special Rapporteur understands that some of those parties would want to be re-registered. The Government should therefore consider revisiting the existing laws with a view to creating non-discriminatory conditions for the exercise of the right to freedom of political association.

27. To date, the NLD has been allowed to reopen some 25 of its original 40 branch offices in Yangon Division. The Mandalay NLD headquarters and two other township offices that are located in its premises are functioning normally. The NLD had also been authorized to send party organizers to prepare for the reopening of offices in Mandalay, Mergui and Ayeyarwady Districts, according to NLD spokesperson U Lwin. The approval process for the reopening of these offices has been handled on a case-by-case basis. As the Special Rapporteur understands, it, to open a party office there must be at least five members, office space and a signboard; once these requirements have been met, permission is sought from the authorities through the NLD central office in Yangon. To his knowledge, four other parties (SNLD, KDUP, NUP and LNDP) also have opened party offices in Yangon, Lashio and Kentung. He presumes that the five other legal parties are also allowed to do so. These developments are welcome.

28. The Special Rapporteur is concerned, however, that unnecessary, discriminatory and stringent restrictions continue to hamper the exercise by legally registered political parties of the fundamental human rights of freedom of assembly, association, expression, information and movement: those parties need prior permission from the SPDC to open party offices. Whereas the NUP (widely regarded as close to the SPDC) is allowed to publish party materials, the NLD and other parties still cannot and do not have permission to operate photocopiers, mimeographs or fax machines, which require government licences; their office telephone lines are disconnected; they can hold monthly meetings in office premises but public gatherings require prior permission. He heard also of official pressures on party members and organizers to resign their membership and on landlords to refuse to rent office premises to political parties.

29. The Special Rapporteur understands that the top NLD officials are subject to systematic surveillance by military intelligence personnel, with their movements, contacts and communications closely monitored. Lower party members are also closely watched, but apparently less systematically. Such restrictions, if they exist, are not conducive to the atmosphere of trust and confidence that is necessary to pave the way for effective and mutually respectful political dialogue and cooperation. It is essential that all political parties and ethnic nationalities enjoy the basic political freedoms.

2. Freedom of expression and information

30. Freedom of expression is controlled by more than half a dozen laws, the violation of which, may be, and in fact is, widely sanctioned by 3 to 20 years in prison.[3] There are numbers of people still in prison for having peacefully expressed their views verbally, through participation in peaceful demonstrations or in activities of political parties, for having written about human rights or political issues in the country, or for reading or possessing written materials deemed illegal. Among them, for instance, is a teacher interviewed by the Special Rapporteur, who was sentenced to seven years in prison for reportedly possessing a book written by a foreign author analysing transitions from authoritarian to democratic regimes.

31. The Special Rapporteur joins the Special Rapporteur on freedom of opinion or expression in voicing concern regarding the plight of individuals who were imprisoned for the peaceful exercise of the right to freedom of expression. He believes that the release of all persons detained for the peaceful expression of their views should be among the priorities of the SPDC if it is to pursue its confidence-building efforts in a convincing manner.

32. All domestic print and electronic media are State-controlled, except the recently established bi-monthly English-language Myanmar Times. However, the Special Rapporteur understands that it is, too, subject to censorship, formal or self-inflicted, as correspondents are instructed by military intelligence personnel as to how certain subjects are to be covered. During his mission the Special Rapporteur became aware that there appears to be no formal censorship of the content of what the in-country-based correspondents of foreign media write. At present, there are 21 foreign news agencies in Yangon, compared with 9 in 1989, of which 19 use local reporters; 1 uses a resident foreign reporter and another one a visiting reporter, both from the region. Among them there are only two women. Though the number of foreign media representatives has more than doubled, the conditions of operation remain restricted and should therefore be improved. Only a few of them have e-mail and fax machines, there is no Internet they do not have permission to have photocopiers, and the Government does not give accreditation to foreign photographers.

33. In general, the Government has been very selective in providing access to e-mail and the Internet. As of early 2001 there were reportedly about 3,000 e-mail users; by September 2001, reports indicated a slight increase to 4,000.

3. Political prisoners

34. The issue of political prisoners has been a priority matter for the Special Rapporteur since his first contact with the Myanmar Government. The release of all political prisoners is important, not only as an end in itself but also because it is regarded by the NLD leadership as a prerequisite for moving to the next phase of talks with the SPDC. The Special Rapporteur firmly believes that the unconditional release of all political prisoners will effectively pave the way to a dialogue, national reconciliation and democratization based on the rule of law.

35. As at 15 December 2001, 211 political detainees had been released since the beginning of the year, most of whom were NLD members. Among them were 39 NLD elected MPs who had been detained for two years and eight months without charge or trial in government "guest houses" (mostly military barracks), and other elected MPs sentenced to various prison terms. During his last mission the Special Rapporteur met with Dr. Saw Mra Aung, aged 83, senior member of the CRPP, who described conditions of detention in his "guest house" as good compared with those of other MPs, which were more rudimentary and the cost of which had, in many cases, to be supported by their families.

36. These releases are very welcome.[4] They represent, however, a small percentage of the estimated total and there is a long way to go if releases continue at the present slow rate.[5] While the Special Rapporteur understands that the SPDC, the NLD and other political parties may have different understandings of what constitutes a political prisoner, he wishes to recall that he regards as such anyone who is held in connection with real or suspected political opinions,

affiliation or activities. Under this definition, there remain at least 1,500 political detainees in Myanmar. They include about 800 NLD members, an estimated 300 members of other political parties, students, as well as other political prisoners with no known political affiliation or held in connection with armed opposition groups. Among them there remain 17 MPs arrested in 1990 or in the mid- to late 1990s, of whom 15 are from the NLD (U Saw Ooreh, U Doe Htaung, Dr. Myint Naing, U Toe Po, U Ohn Maung, Dr. Zaw Myint Maung, U Ohn Kyaing, U Soe Myint, U Kyaw Khin, U Khin Maung Swe, U Sein Hla Oo, Dr. Than Nyein, Daw May Win Myint, U Naing Naing, and Khun Myint Htun) and 2 from the Mon National Democratic Front (Dr. Min Soe Lin and Dr. Min Kyi Win). Among the remaining political prisoners there are at least 100 women. One of them is a 47-year-old woman, a medical doctor and a mother of two, interviewed in the Mandalay prison, who was sentenced to seven years in prison for possessing two books deemed illegal: Aung San Suu Kyi's collection of essays, Freedom from Fear, and the other, an essay analysing transitions from authoritarian to democratic regimes by a foreign author.

37. In his statement to the General Assembly, the Special Rapporteur deplored the fact that the released did not appear to include student leaders or activists. Since then, the SPDC released one student - Yin Htwe, one of the All Burma Federation of Student Unions (ABFSU) leaders (on 12 December) - whose sentence expired in 1999 but who had continued to be detained. Many more student leaders of the 1988 demonstrations and the 1996 and 1998 protests are still in prison or exile such as, for instance, student Thet Win Aung, a 29-year-old member of the ABFSU who had been sentenced to 59 years in prison for having peacefully demonstrated in favour of the improvement of the education system and human rights.

38. During his last mission the Special Rapporteur reiterated his call for the release of all political prisoners. In pursuance of the understanding he had reached with the Government during his April 2001 visit, he submitted for the consideration of the SPDC a list of 49 prisoners for release, including all remaining imprisoned elected MPs, 12 humanitarian cases of persons who are either old, sick, or detained beyond the term of their sentence (see annex II), and 13 persons whose continued detention is related to an alleged attempt to communicate human rights information to the United Nations (see annex III). The Special Rapporteur believes that it is essential that the Government guarantee the safety of persons contacted and interviewed by the present and previous Special Rapporteurs.

39. The Special Rapporteur received consistent testimonies that following their release elected MPs and other senior political detainees are under close surveillance and must report any travel outside their home village or town to military intelligence personnel. After his mission the Special Rapporteur was informed that this practice has been relaxed. He heard as well of pressures on recently released prisoners to resign from the NLD and stop political activities in exchange for economic privileges. The Special Rapporteur urges the Government to ensure that released political prisoners will not be rearrested or subjected to harassment and will be able to participate freely in the political process.

40. It is encouraging that political arrests seem to have declined dramatically. So far, the Special Rapporteur knows of one, possibly another three, political arrests since the beginning of contacts between the SPDC and the NLD in October 2000. Ms. Gracy, an ethnic Chin and Baptist pastor accused of supporting the armed Chin National Front, was reportedly sentenced to

two years in prison with hard labour in April 2001 and taken to Kalaywa camp near Sagaing where her brother is also detained. The three others - U Shwe Saw Oo and U Tha Tun Aye (both 48 years old, lawyers) and U Khin Maung Gyce (50 years old, trader) - are members of the Arakan League for Democracy who were reportedly arrested in March 2001 and are currently detained in Sittwe prison awaiting trial. Some cases of detention of youths because of their activities in the NLD had been reported to the Special Rapporteur, but it seems that they were released after two weeks.

41. Noting the very slow pace of releases and the large number of remaining political prisoners, the Special Rapporteur stresses the importance of finding ways to speed up the process. The idea of an amnesty that has been proposed by some players could offer one possible avenue. In legal terms, an amnesty is an executive/governmental act that wipes away both the sentence and crime of an entire class or classes of people. It is not to be confused with a pardon which aims at specific individuals and does away with both crime and sentence. The power to commute is part of the power to pardon.

42. Amnesties have often been used in various countries to resolve past differences, open up the political climate and encourage participation (of political opposition), and thus do not imply that anything morally wrong was done. They also give a sense of historical closure in that they are premised on a desire to forgive and move along. A pardon is usually a traditional prerogative of the King - or, in modern States, the Head of State - to demonstrate generosity and/or ease domestic tensions (in prisons or in political life) and is usually issued on regular and auspicious occasions. This said, an amnesty may be declared to coincide with a national, religious or symbolic date - such opportunities can be identified in Myanmar's political culture. In this regard, there are precedents in recent Myanmar history, which can provide useful "traditional" references. The experience of other countries could also provide acceptable sources of inspiration in Myanmar.

43. At least four categories of political detainees could be the beneficiaries of an amnesty in Myanmar: convicted prisoners; those under pre-trial detention; persons simply put in prison without charge or trial (arbitrary detention), and those who remain in detention after the completion of their terms. In the last category, there are reportedly at least 51 political prisoners who are being detained under article 10 (a) of the 1975 State Protection Act. The most well known of these cases is Paw U Tun, a student leader, who has remained in detention two years after he completed his 10-year prison sentence in 1999.

44. An amnesty for political prisoners in the context of political transition in Myanmar would demonstrate the Government's good-faith commitment to open up the political system and pave a solid way towards national reconciliation. Myanmar ownership of the act is a very important aspect, so that it is a national/domestic political event which has a full local dimension and political significance. It should thus not just be a concession to outside pressure, even if amnesty does have the effect of relieving that pressure.

45. It is important to remember that an amnesty has two fundamental principles. First, it restores all beneficiaries to their full citizenship rights: all rights enjoyed prior to the arrest must be restored; any property confiscated must be returned; there should be no rearrest on the same grounds; and the question of compensation for the losses suffered because of the imprisonment

may be considered. Second, an amnesty should be unconditional. And non-discriminatory. There should be no strings attached in terms of the beneficiaries having to recognize that they have acted wrongly. Their release should be unconditional and they should not be made to promise to refrain from any (peaceful) political activity after release. Their release should not result in disadvantage to them in areas such as employment, the exercise of their civil and political rights, access to higher education for their children, etc.).

46. In Myanmar, there is a provision in law which is currently used for the purpose of release, against a written pledge by a prisoner that he/she will not engage in political activities. Section 401 (1) of the Criminal Procedure Code reads: "When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced". In practice, a number of political prisoners were released under this section and had to sign a statement that they would not engage in any political activity.

47. On the question of legality in principle, a court decision, should only be quashed by another legal decision adopted by the legislator or the judiciary. This is problematic given the legal and law-making system in Myanmar. In this respect, the need to ground the decision in law and to protect the integrity of the prosecuting authority and process must be balanced against the need to ensure the best possible mechanisms of national "reconciliation", which differ so much from country to country. In any case, prisoners who have not been charged and tried, and are thus arbitrarily and administratively detained, may simply be let go.

4. Conditions in prisons

48. Prison conditions had been reported to be very poor for many years and most reports received by the Special Rapporteur indicate that prison conditions as a whole are still inadequate. He therefore endeavoured to examine the actual conditions in prisons, both from the perspective of the authorities and of the prisoners, and also as a part of a broader assessment of the judicial system, its independence, and work with concerned authorities and partners on ways to improve the administration of justice. In order to do so, during his fact-finding mission to Myanmar the Special Rapporteur obtained from the Minister for Home Affairs permission to select detention facilities to visit and prisoners to interview confidentially; these standard operating procedures for prison visits would enable an independent assessment of prison conditions. The Special Rapporteur also sought and received guarantees that the persons whom he interviewed would not be subjected to any harassment or reprisals. He notes with gratitude full cooperation received in this regard from prison authorities.

49. The Special Rapporteur visited the Lashio and Mandalay prisons and Hton-Bo male labour camp and was able to access there all facilities, including cells/wards/ barracks. He also interviewed privately a dozen detainees with complete freedom (see annex IV). If the mission had not been suspended, the Special Rapporteur would have visited the Myitkyina prison (Kachin State), the Insein central prison and a second labour camp and continued to interview detainees there. The basic information about the detention places visited is summarized below.

50. The Lashio prison was built in 1971 and subsequently upgraded to a level-A prison with a capacity of 1,000 prisoners. At the time of the visit on 13 October 2001, there were 966 inmates, of whom 122 were females and 72 were under pre-trial detention. All prisoners were common law offenders. The prison had 78 male and 7 female staff.

51. The Mandalay prison is a central prison with a capacity of 5,000 prisoners. It used to be located in the palace and was moved to the current premises in 1982. As at 16 October 2001, it had 4,499 inmates, including 150 "security" detainees, of whom 3,900 were convicted (3,072 males and 828 females) and 599 were under pre-trial detention (512 males and 87 females). The youngest prisoner was 18 years old, the oldest 80, and most prisoners were 30-50 years old. There were also 43 little children with their incarcerated mothers. The main objective of the Mandalay prison was said to be skills training to facilitate the rehabilitation of prisoners through voluntary work in a variety of workshops. For females there were workshops for embroidery, knitting, sewing, tapestry and traditional cigarette (cheroot) making; for males there were workshops for cotton dying, chicken breeding, fabric hand-weaving, production of chicken cages and ploughs, etc.

52. The Hton-Bo male labour camp was established in 1979 at the foot of the mountains near Mandalay. It has a capacity of 900 prisoners, but at the time of the visit on 14 October 2001 there were only 279 inmates, all common law offenders, and 90 staff. According to camp authorities, the system of camp administration was essentially the same as in the prisons except that prisoners in labour camps are hired for development work for which they receive more benefits such as reduction of prison terms, remuneration, and better food. The prisoners' main occupation is rock quarrying for road construction.

53. In terms of overall conditions, the prisons and detainees visited by the Special Rapporteur and his team looked clean and tidy. Political detainees appeared to be separated from common criminals, men from women, and juveniles from adults. The Special Rapporteur's initial impression, based on in situ visits and discussions with prison authorities and private interviews with detainees, is that there have been incremental improvements, both in prisons and labour camps, in the areas of sanitation, food, access to basic medicine and medical treatment, and family visits in recent years. These improvements can be linked to at least two factors: (i) the introduction in 1997 by SPDC Secretary-1 of a set of 11 reform instructions to prison authorities;[6] and (ii) access granted to the ICRC in May 1999 to conduct its protection mandate in all prisons and labour camps.

54. The 11 instructions were written on the wall very visibly in each of the detention places visited. At the request of the Special Rapporteur their full text was provided after his mission. The document is called "Points of Reforming the Prisons in Myanmar" dated 7 July 1997. It reads as follows:

> "(1) to supervise the prisons' security systematically and not to leak out the information from inside to outside because of incorrect news produced by destructive elements; (2) to perform prevention of infectious diseases in the prisons, spraying disinfectants, medical check-up of the inmate in collaboration with the relevant departments; (3) to ascertain that drains in the prisons are free of foul smells and impurities; (4) to provide for clean and favourable living conditions for the inmates, in a humanitarian spirit; (5) to keep up

> with the effort for the development of the inmates' mental and social factors; (6) to prevent overcrowding, to ensure good ventilation by accommodation of inmates separately; (7) to oversee systematically their health situation; (8) to carry out any necessary improvement and reformation; (9) to treat the inmates with a view to maintaining national solidarity; (10) to report any necessary amendment in the prison manual; and (11) to adopt certain internationally acceptable and modern practices of prison administration."

55. An additional set of nine instructions was issued by Senior General Than Shwe, Chairman of the SPDC, on 22 January 1999, whereby prison authorities were ordered:

> "(1) to ensure the inmates become good citizens after their release; and to help them escape from lower life by transforming the prisons into Rehabilitation Centres and to get rid of their prisoner complex; (2) to provide family wings so that the inmates can live with their families, for their health and education, and to open dispensaries and schools that will remain useful to the village when the camp is closed; (3) to give five acres, farming implements and investments to them after their release if they decide to settle in the area; (4) to assist in the production of goods for the country; (5) to be in touch with the world to arrange newspapers, journals, TVs and radios for them; (6) and to allow those inmates to visit their families during vacation seasons, provide them travelling warrants and part of their savings; (7) to provide accommodation and jobs if their families want to stay together with the inmates; (8) to help the neighbouring villages by sharing agricultural methods and to assist the needy and the elderly; and (9) to add the objective of 'Striving in the interest of the people' for the Ministry of Home Affairs."

A complete assessment of the actual implementation of the instructions has yet to be provided to the Special Rapporteur.

56. The cooperation between the SPDC and the ICRC appears to be exemplary, based on fair and constructive working relations, and the Special Rapporteur strongly hopes that it will continue and develop further. He was encouraged to receive positive feedback about the ICRC visits and assistance in all three detention places that he visited.

57. In concrete terms, the Special Rapporteur heard from prisoners that food has improved somewhat, both in quantity and quality, at least in the places he visited. There was more use of oil and meat and greater access to drinking water. Mandalay prison and Hton-Bo labour camp had their own water purification systems. Sometimes boiled water was also made available in tanks. In prisons meat curry (or an egg for vegetarians) was said to be served once a week, while in labour camps it was provided at least twice,[7] sometimes even more, with a sufficient quantity of rice.[8] However, the Special Rapporteur's impression is that the quality of food in prisons is still inadequate given the reported high rate of malnutrition.

58. Attention to sanitation and health has also improved somewhat, with biweekly or weekly medical check-ups, better supply of basic medicines and access to washing/shower facilities, disinfecting of toilets, provision of bins in wards and soap for inmates. Families may visit as often as they can afford it. Access to newspapers/books and recreation facilities has also seen some improvements.

59. The Special Rapporteur is not sure, however, that prisoners in labour camps can actually benefit much from recent improvements in view of their extremely tiring and heavy work in the quarries. A daily work quota is 100 baskets of rocks; each basket brings 100 kyats, of which, according to prison authorities, 10 per cent was set aside as remuneration for prisoners and given them upon release.[9] The prisoners work every day, from 6.30 a.m. to 11.00 a.m. and from 1.00 p.m. to 5.00 p.m., except for a half-day rest on Sunday afternoon They usually march to and from the quarry, which takes about 30 minutes. In addition, the Special Rapporteur understands that they are chained 24 hours a day for the first six months, though at the time of his visit they did not have chains.

60. The Special Rapporteur has received allegations that corruption is frequent and physical abuse of prisoners occurs, but he was not in a position to assess their extent. His initial impression was that physical ill-treatment in pre-trial detention by military intelligence appears to be endemic, while it is not systematic once detainees are transferred to prisons. In this regard, the weakness of the system seems to lie not so much in bad instructions, but in failing to enforce respect for the rules and instructions; this means that a lot depends on the management, chain of command, personalities and education of prison staff.

61. The Special Rapporteur also heard of discriminatory treatment of certain categories of prisoners. As he understands it, political prisoners, for instance, do not benefit from remission entitlements, do not have access to recreation facilities, receive less medical attention and need therefore to rely on medical supplies from their families, have limitations on family visits (once every two weeks for 15 minutes in the presence of guards), cannot read newspapers, and can only read strictly censored religious books but not after 4.00 p.m. They are usually kept in special security cells, which have two compartments: an inner one (measuring about 8 x 10 feet) for sleeping/eating and an outer one (about 8 x 13 feet) for bathing/walking. An iron door separating the compartments is open from 7.00 to 12:00 a.m. and from 2.00 to 5.00 p.m. Prisoners are usually not chained and not assigned to labour camps. The Special Rapporteur heard that prisoners convicted of drug abuse are also subjected to discriminatory treatment, which is in a way a kind of extra punishment. Thus, as he understands it, such prisoners in camps are chained for the first 12 months, not 6 months like other prisoners, and they are not usually sent to hospitals because the latter are reluctant to receive drug-abusers. Apart from the need to ensure the equal application of minimum standards for the treatment of prisoners, the Special Rapporteur notes the need to address the pockets of vulnerability among the prisoner population such as the sick, the elderly, juveniles and women, especially those with children and pregnant women.

62. The Special Rapporteur was also informed that there was a high mortality rate among labour camp inmates, mainly due to physical exhaustion and inadequate medical care. He believes that many aspects of the labour camps are incompatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners. He strongly hopes that the Government will consider promoting changes in the penal legislation which will make it possible to close such hard labour camps and transfer the inmates to other establishments. The Special Rapporteur also received a list of about 68 political prisoners who are reported to have died in prison since 1988. The issue of death in detention is a complex area, one which he intends to examine closely, along with the other areas of concern mentioned above, during his next missions.

63. The Special Rapporteur believes that the cooperation extended to him by the Government of Myanmar in relation to prison visits indicates that Myanmar authorities are willing to open their jails to independent human rights scrutiny and are ready for cooperation in order to improve further conditions therein. Overall, incremental improvements in prison conditions are very welcome, but problems remain which need to be addressed comprehensively.

5. Freedom of religion

64. Myanmar is a country of religious diversity. During his meeting at the Ministry of Religious Affairs, the Special Rapporteur was informed that Buddhism (89.3 per cent) Christianity (5.6 per cent), Islam (3.8 per cent) and Hinduism (0.5 per cent) are the four recognized religions in Myanmar, while numerous other religious beliefs and practices exist, often closely intermingled with the major ones, especially among ethnic nationalities. The four main religions are represented by 12 Christian, 4 Muslim and 4 Hindu religious groups/organizations. Buddhist monks' organizations operating at all levels are united under the Sangka. Corresponding to the richness of religious diversity is a rare landscape of 51,468 monasteries, 3,265 churches, 2,266 mosques, and 466 Hindu temples. There are about 475,000 Buddhist monks and about 25,000 nuns.

65. The Ministry of Religious Affairs is mandated to work for the promotion of religious freedom, "purification, perpetuation and promotion of Therawada Buddhism", and preservation of Myanmar's traditions and cultures. It has existed since independence; after the reorganization of ministries in 1962, it was combined with the Ministry of Home Affairs in 1962 until it was recreated as a separate ministry in 1992. The prime objective of the Ministry is to protect and promote the exercise of the right to freedom of worship in a spirit of mutual respect and tolerance. The Special Rapporteur was informed that to this end, the Ministry organizes yearly financial aids/grants to Buddhist, Christian, Muslim and Hindu communities, arranges for religious leaders to attend religious seminars/conferences abroad, helps leaders of other religious communities to obtain free travelling passes, assists missionaries from other religions to extend their permits to stay in the country, and provides mediation in case of religious disputes. The Special Rapporteur was also informed that religious books and periodicals are allowed to be published for the respective communities and religious texts, objects and tapes can be imported for religious purpose. Ceremonies celebrating Christmas Eve and Easter for Christians, the birthday of the Prophet Mohammad for Muslims and Deepawali for Hindus are allowed to be held every year. Talks on the occasion of holy days can also be broadcast over Radio Myanmar.

66. The Special Rapporteur fully supports the policy of the Government of Myanmar aimed at promoting the right to freedom of worship, which is consistent with the sprit of human rights values and principles. In this respect, he is particularly worried at the reported violence against Muslim communities in 2001. Muslim individuals, houses, shops and mosques were allegedly attacked resulting in an unknown number of deaths and injuries, and widespread looting and destruction of property and religious buildings in Sittwe (February), Toungoo, Kywebwe and Saw (15-17 May), and in Pyi, Pakkoku, Bago, Taunggu and Inthada (mid-October). Several arrests were reportedly made, 34 in connection with the riots in Pyi, Toungoo and Bago. A curfew was imposed in several localities. The SPDC has confirmed that the riots occurred but released no information. Local reporting or communication seems to have been discouraged. Muslim communities have since been subjected to intense security surveillance, freedom of

assembly has been restricted and travel restricted or banned. The Special Rapporteur has also heard allegations that in some cases, tensions may have been encouraged by local authorities who intervened only at a late stage to stop the violence. If these allegations are true they are a matter of serious concern. In the current volatile international context following the 11 September attacks in the United States, all efforts should be made to defuse such tensions, which, in the context of Myanmar, may spill over into wider unrest and violence. This appears to be one of the reasons why the SPDC reportedly declared on 15 October a 45-day state of emergency, and stepped up security measures throughout the country.

67. In his letter of 5 November 2001 to the Permanent Representative of Myanmar in Geneva, the Special Rapporteur sought clarification regarding the above-mentioned allegations. Earlier, on 18 June 2001, the Special Rapporteur on freedom of religion also wrote to Myanmar Government regarding the ethnic riots in Toungoo in May.

68. The chronic ethnic and religious tensions and violence in the north-western State of Rakhine are a matter of particular concern. It is a complex issue requiring attention, which the Special Rapporteur intends to look into at an appropriate future opportunity. Similarly, the reported restrictions on the right to worship imposed on the Christian minorities, particularly in Chin State, will also be the subject of attention.

69. Inter-ethnic/religious tensions are a matter of prime concern in a country whose extremely rich human, historical, political, linguistic and cultural diversity poses the constant political challenge of making these differences coexist in a peaceful, dynamic and constructive manner. The complex dialectics of unity and diversity is a central challenge to the current nation-building efforts in Myanmar. Either unity is pursued in a spirit of tolerance which respects differences, or there will be a risk undermining its very efforts for peace and stability.

6. Forced labour

70. The Special Rapporteur is pleased that the mission of the High-Level Team (HLT) of the International Labour Organization (ILO) had the full cooperation of the authorities. He thinks that this demonstrates the commitment of the Government of Myanmar to comply with its international obligations and effectively end forced labour.

71. The Special Rapporteur takes note of several aspects regarding the enforcement of the forced labour ban in Myanmar as reported by the HLT: no cases of forced labour have been prosecuted because either people have no faith in the independence and effectiveness of the courts or the police, or they are afraid of the consequences of complaining in view of the absence of an independent route for complaint. People prefer to use administrative means; there have allegedly been 38 instances of administrative action against perpetrators of forced labour but no action under the Penal Code.

72. The Special Rapporteur also takes note of the tentative conclusions in the HLT report which noted "a very moderately positive evolution in the situation".[10] It appears that there has even been reduction in the use of forced labour, but the process does not appear to be sustainable

and there is much regional variation. Forced labour on civil infrastructure projects appears to have ceased. Violations are greatest in the southern Shan State and eastern parts of Kayin State as well as northern Rakhine, where the military are active.

73. The Special Rapporteur thinks that the report reflects accurately the Government's commitment to eradicate forced labour and the problems involved in carrying this out. He would like to draw attention to the fact that forced labour is closely connected with problems which largely stem from inadequate resources at the disposal of the Government and the people of Myanmar for resolving the issues which they are facing, including continuing insurgencies in border areas, drug smuggling, and the slow pace of developing a democratic future for the country. He also understands that these problems are exacerbated at the same time by some lack of support and understanding by the international community and the urgent need for government officials and others to become fully aware of contemporary international norms as Myanmar emerges from 40 years of international isolation.

74. The Special Rapporteur appreciates the care the HLT took in identifying weaknesses that must be addressed by the Government. Among them is the lack of consistent publicity through the media and via government officials about Order No. 1/99 and the Supplementing Orders along with explanations of their implications, in the relevant languages. There is a need for a thorough, comprehensive and consistent review of the procedures for prosecution and administrative actions to be taken in the case of complaints to ensure enforcement of the relevant norms.

75. The Special Rapporteur thinks that the Government must seriously consider and implement a proposal for the establishment of an independent ombudsman and the opening of an ILO representative office in Yangon. An ILO presence in Myanmar can contribute to effective and durable cooperation with the authorities. He thinks that it is also necessary to launch systematic training on labour standards and human rights law for the military and government personnel.

76. There are, of course, issues in the report which require further thought and consideration as they have significant resource implications. The Special Rapporteur notes that the report acknowledges that poverty and the lack of sufficient budgetary allocations for the protection of social and economic rights are at the root of the problem of forced labour in the country. The lack of assistance from the international community coupled with declining government revenues, noted the report, means that the capacity of the Government to implement more fundamental structural and programmatic reforms is constrained.

77. Finally, the Special Rapporteur shares the particular concern expressed in the report in regard to the involvement of the military in the use of forced labour. This concern stems from, inter alia, reports from the three regions of the country which pose the largest security problems for the people of Myanmar. He has also taken note that the allegations of forced labour are linked to the "self-reliance" policy of the government armed forces. The report notes that the absence of mechanized equipment, including helicopters, leads to civilians being required to porter. It is suggested that the number of troops be reduced in order to alleviate resource

requirements. But a modern, smaller army will also need a great deal of capital investment and recurrent expenditure in order to achieve the level of security which the situation requires, and no such resources exist.

78. The Special Rapporteur thinks that human development and economic modernization must take place to defeat the poverty that is at the root of Myanmar's many problems. Rational management of the economy and more budgetary allocations for the protection of economic, social and cultural rights must be top priorities in tackling those problems. In order to maintain the pace of reform, assistance and support from international organizations and the United Nations system is also required. Capacity-building measures must be taken to strengthen the fiscal and administrative capacities of the Government to ensure that the necessary resources and personnel are available to maintain momentum.

C. Economic, social and cultural rights

1. Tertiary education

79. During his fact-finding mission, the Special Rapporteur started looking at the situation of education at the tertiary level. During his next mission he intends to take up the situation of basic education. Tertiary education had been deteriorating since Ne Win came to power in 1962 and had suffered from many years' isolation, stagnation and repression. By 1988 the Government had become concerned about student unrest and began to implement a policy similar to Ne Win's which involved geographical dispersing of institutions and reducing terms of study for students. After 1988 all civilian universities, except universities for distance learning and foreign languages, and many colleges began to be closed down and by 1999 they had been shut for up to eight years. As a result, was an enormous backlog of students waiting to start and/or finish their degrees. Such a backlog, coupled with inadequate resources for education, presented a huge challenge for the authorities who in the last couple of years have started making a number of reform efforts to rectify the situation.

80. Gradual reopening of institutes of higher learning started in 1999. Institutions of medicine for third year to final year medical students were reopened in January 1999; universities for third year to fourth year engineering students in December 1999; Yangon University for final year students in June 2000. In July 2000, all remaining classes at all universities and institutions were reopened. In parallel, efforts have been made to build new institutes of higher learning and to upgrade and modernize existing education facilities. The duration of courses has been reduced by one year at all institutes and universities except for those of medicine and dentistry. Though the duration of courses has been shortened, syllabuses remain the same.

81. At the meeting with the Minister of Education, the Special Rapporteur was informed that there were 124 institutes of higher learning in the country with a student population of 555,203 in 2001, compared with 31 institutes in 1988 with about 134,000 students. These institutes are administered by 11 different ministries, including those responsible for education, health, culture, forestry, agriculture and irrigation, livestock breeding and fisheries, cooperatives, science and technology, religious affairs, the civil service selection and training board, and progress of border areas and national races and development affairs. Although the ministries are

autonomous in the administration of their respective institutes, they follow a uniform policy regarding qualifications and curricula, which is determined by the University Council headed by the Minister of Education and composed of representatives of these ministries. According to the Minister, institutes and colleges are now open in every state and division, and two more universities and one college will be opened in 2002 in Yangon, Kyaukse and Bamaw, respectively.

82. In reply to the Special Rapporteur's question about the reasons for relocating tertiary education institutions to new satellite towns and spreading them across the country, he was told that this had been done to improve their accessibility and increase their capacity. An explanation was provided with reference to Yangon University, which was initially designed to receive 8,000 students. Now two new universities exist in its place: the East Yangon University in Tarwa, Thanlyin (with 3,417 students in 2001) and Dagon University in Dagon, a new satellite town (with 13,530 students in 2001). Another one - the West Yangon University - is planned to be opened in June 2002 in Htantabin. Not only are those campuses far from the one in the centre of the city, but access to the latter is now restricted; the Yangon University main campus now takes only post-graduates and diploma students (5,189 in 2001).

83. In the Special Rapporteur's view, a quadrupling of the number of students can be linked to at least two factors: (i) the opening of tertiary education facilities across the country should have contributed to easier physical access, and (ii) the popularity of distance education continues to increase, particularly among those who are not are qualified enough to attend professional institutes such as medical, engineering and computer schools, and it is cheaper and easier to obtain a bachelor's degree while combining study and work.[11] This observation is supported by enrolment figures in recent years. In 1999 the number of distance education students was about 178,000 as opposed to the total number of about 140,000 students enrolled in all other tertiary institutions in the country; in 2001, these figures were about 350,600 and 204,600, respectively. Distance learning is administered by the Yangon and Mandalay Universities of Distance Education and is based on an "e-education system" whereby lectures are transmitted to "learning centres" throughout the country and coursework is done by correspondence.

84. In the course of his mission, the Special Rapporteur observed some of the examples of the Government's efforts to upgrade and modernize education facilities. Thus, he visited the large and brand new buildings of the Union Solidarity and Development Association (USDA),[12] which runs parallel non-formal education courses across the country. He also visited the new Buddhist Missionary University, which was opened in 1998 as a centre for higher learning of the theory and practice of Theravada Buddhism under a special Government-sponsored project. It is unique in a sense that all students admitted to this university benefit from full scholarships covering all costs, including tuition, books, accommodation and boarding. As at October 2001, there were 146 students, including 76 from 16 foreign countries, and 34 members of the faculty. According to the project, the university should be able to receive 1,200 students in 10 years.

85. The Special Rapporteur also visited Yangon University where in contrast he noted a need for significant investment to improve its overall infrastructures. It was encouraging however, to see that the university had a modern computer lab and its Department of Historical Research had access to the Internet. During his visit he saw students working in the computer lab. He was informed that apart from the above-mentioned department, only the Department of Higher

Education, the Education Resource Bureau and the Minister of Education had access to the Internet. He also learned that after the installation of appropriate equipment a wider circle of institutes would have direct access to the Internet, which could happen next year.

86. The Special Rapporteur's team visited the University for Development of National Races in Sagaing, which, having been established in 1964, was upgraded to the university level in 1991 and had impressive new infrastructure. As at October 2001, there were 1,050 students representing all national races of Myanmar and 380 teaching staff. The university had a very well-established material base, which was perhaps due to the fact that it had been under the direct control of the SPDC Chairman. There the team saw, among other things, fully equipped computer and language labs, a CD-ROM library and modern classrooms; this was very encouraging to see, but at the time of the visit they could not be used because there was no electricity supply. The team asked to see the library but it was closed on that day. The team was shown a video, according to which the preparation of students at this university was based on combining education from books with work practice with a view to nurturing good leaders who bear in mind the "three main national causes of Myanmar: non-disintegration of the Union; non-disintegration of national solidarity, and perpetuation of national sovereignty".

87. Despite the greater number of institutes of higher learning opened since 1999 and recent efforts to upgrade some education resources, the increase in the number of non-distance education students has been 2.7 times less than that of distance education students. A number of factors may have contributed to this. Among them, the Special Rapporteur can name the severe financial and human resource constraints such as lack of teachers and a relatively weak material base (for instance, books, libraries, science laboratories, access to the Internet, drinking water and electricity supply), with the exception of a few institutions such as those he visited and described above; this leads to poor quality education, thus discouraging students from enrolling. The tuition fee, which is 500 kyats per month (less than US$ 1) for the traditional universities and 1,500 kyats for the whole year for universities of distance education may also be a contributing factor.

88. The Special Rapporteur has received information about political conditions for admission to universities and poor professional training of education personnel. Reportedly, all students attending institutes and universities are required to submit official recommendation letters issued by a local authority (ward/village-level peace and development councils) as well as by a local police station testifying that they are not involved in politics and are of good moral character. He was also informed of tight security surveillance of campuses, a "brain drain" from the public education sector to the growing private sector (for the minority who can afford it) and of children of political detainees being denied access to higher education despite having adequate academic results. He has also received information that the military ensure that its associates obtain a tertiary education, inter alia through their own institutes of learning such as the Defence Services Academy and well-equipped military legal, medical and engineering universities. Well-to-do families and their relatives may also send their children abroad for university education. The Special Rapporteur hopes to be able to look into these areas in a constructive manner during his next mission.

89. The Special Rapporteur is encouraged to note the remarkable rate of female enrolment at the tertiary level. In many institutions the admission of female students is on the basis of a fixed

gender ratio. For instance, female student admission is 50 per cent in computer schools and institutes of education and 40 per cent in engineering schools. In many places, female students even outnumber males, which is the case, for example, in institutes under the Ministry of Culture where the gender ratio is currently 483 female students as opposed to 231 males. The same ratio in institutes under the Ministry of Education is 61.3 per cent women and 38.7 per cent men.

90. The Special Rapporteur could not find information from government sources about the exact proportion of the State budget allocated to the education sector, but he was told that the education budget was the next largest, after that for infrastructure, with more funds directed to tertiary education than for basic education. According to the latest figures from other sources, government spending on tertiary education has declined from 0.25 per cent of GDP in 1994/95 to 0.17 per cent in 1999/2000, which is extremely low by international standards, especially given the seriousness of the challenge of reforming higher education.[13]

91. Overall, the Government's efforts in reopening all institutes of tertiary education, building new and upgrading existing education facilities, and promoting female enrolment are very encouraging. The Special Rapporteur is of the view that the Government should consolidate its gains through the allocation of a far greater level of resources with a focus on filling the existing establishments with better quality education. To do so, there should be better targeting of investments to address critical areas such as teacher training and strengthening evenly the material base of universities and institutes.

2. HIV/AIDS

92. The speed at which HIV/AIDS has spread in Myanmar is a matter of great concern. Briefings that the Special Rapporteur had received during his fact-finding mission from the United Nations Country Team, the Ministry of Health and NGOs painted a truly alarming picture. With an infection rate of about 2 per cent, Myanmar stands second in rate of infection in the region. Taking the UNAIDS estimate of over 500,000 people who may already be infected, almost 1 in every 100 persons may be in danger.

93. The Government has been combating the HIV/AIDS problem through a multisectoral approach. Education programmes for the public as well as risk populations are being implemented in the country. Support for syndromic management of sexually transmitted infections, a 100 per cent condom use programme, prevention of mother-to-child transmission, a blood safety programme, and care and counselling for people living with HIV/AIDS is initiated by the Government with the assistance from United Nations agencies and international NGOs. These efforts will need to be significantly intensified in a determined and concerted manner as a matter of high priority as the next five years will be critical in determining the future trajectory of the epidemic. Unless that is done now, HIV/AIDS will become a major problem in the country as it may kill in a matter of years more people than all internal conflicts have in several decades. It is primarily the young generation which will bear the brunt of the epidemic. Only through broad-based social mobilization and advocacy for preventive and curative action integrated into a national comprehensive and sustained campaign led by the highest levels of authority, with appropriate international assistance, can this epidemic be curbed. In this respect, the Special Rapporteur welcomes the launching in October 2001 of the United Nations Joint Plan

of Action on HIV/AIDS in Myanmar for 2001-2002. The implementation of the plan will require approximately $16 million, of which $4.6 million have so far been made available by co-sponsoring United Nations agencies.

94. Given new challenges posed by the spread of HIV/AIDS, public spending on health should be appropriate. It was worrying that government spending on health care had declined from 0.38 per cent of GDP in 1995/96 to 0.17 per cent in 1999/2000.[14] However, the Government claims that its health expenditure in 2000/01 has gone up to 0.305 per cent of GDP.

III. OTHER ISSUES

A. Ceasefires

95. Progress in achieving peace through ceasefires with various ethnic armed groups, accompanied by development efforts, was the remarkable success of the government initiatives (largely associated with the SPDC Secretary-1, Lt. General Khin Nyunt) during the 1990s. At the meeting in Yangon with leaders of former insurgent groups, the Special Rapporteur witnessed their appreciation of unprecedented peace and security which their people had been enjoying after the ceasefires. Recalling that their lands had been in turmoil because of armed conflicts for several decades, they seemed to be satisfied with the choice they had made on behalf of their people and sounded hopeful about their future economic and social development. The Karenni National People's Liberation Front, for instance, is one such group. It agreed on a ceasefire with the SPDC on 9 May 1994, but still keeps arms (about 2,000 men); its territory is structured into the Kayah State Special Region 2, and the people are engaged in agriculture, logging, mining, and construction of roads.[15] A leader of one splinter group of the Karen National Union, which exchanged arms for peace on 17 April 1998 and settled in the Payagon Special Region, informed the Special Rapporteur that the group had since implemented livestock breeding and agricultural projects for which, inter alia, it won a prize from FAO in 1999 for achievements in the poultry area; they used to live in small huts but now they had houses with electricity and larger plots of land.

96. In Shan State, the Special Rapporteur's team, because of the urgent need for his evacuation from Lashio to the Mandalay general hospital, quickly visited Namtit in the Wa Special Region and the border town of Muse. The team was able to observe how former conflict areas were being transformed into peaceful development zones with positive achievements in infrastructure development, trade and large-scale agricultural production. The mission would have visited another important ceasefire area in Kachin State if the visit had not been suspended.

97. During the mission the Special Rapporteur could not obtain the text of a peace agreement from any of the ceasefire groups he had met. He was given to understand that there is no political activity in ceasefire areas, and ethnic groups there have de facto autonomy in running their territories. The central Government is represented only by a military presence and development workers. Some of the groups retain their arms, which, however, does not cause security problems, according to government interlocutors, and all ceasefire groups work together with the Government on developing their respective regions. The Special Rapporteur believes that a regular, substantive and transparent access to those areas to conduct research is required before he can speak objectively and authoritatively about the multiple factors which contributed

to these developments. The rights to peace and security are fundamental human rights. Their enjoyment may contribute to laying the foundations of economic development, but the effective social benefits of such development need to be assessed and the political and institutional expression of what appears to be semi-or largely autonomous areas within the Union of Myanmar remains to be formulated.

B. Refugees and internally displaced persons

98. The Special Rapporteur continues to receive reports and allegations of serious violations of human rights of civilians in areas of conflict between the army and armed groups, particularly in eastern Kayin and Kayah States, southern Shan State, northern Sagaing Division, and Rakhine and Chin States. As usual in this type of conflict, it is the poor and defenceless population which is pressured, violated and victimized by different armed forces that cross their communities. Such violence is largely arbitrary, summary and indiscriminate. This results in large internal displacements and influxes of refugees across borders. The mandate of the Special Rapporteur requires the examination of these allegations in an impartial and objective manner, and he has started doing so. This is a meticulous process, which he intends to pursue during his next missions so as to establish gradually a credible factual account of the human rights situation in these areas.

99. These conflicts have devastated the lives of hundreds of thousands of people across Myanmar for far too long. An estimated 400,000 refugees are currently living in neighbouring countries. An average of 300-700 new asylum-seekers may cross into Thailand every month; this cannot continue. Some of the refugees are provided with temporary shelter and protection. The others live outside camps and without assistance support and have to look for means of subsistence as illegal immigrants, with the constant risk of being exploited, trafficked, or forcibly returned to Myanmar.

100. Reportedly, most of the asylum-seekers arriving in Thailand had previously lived for some time as internally displaced persons (IDPs). Independent monitoring or assistance to IDPs has so far not been authorized by the SPDC and it is thus very difficult to verify their number in Myanmar. Unofficial estimates place the current number of IDPs in Myanmar at from 600,000 to 1 million persons, with around 300,000 in north-eastern Shan State, 100,000-200,000 in Kayin State, 70,000-80,000 in Kayah State, 60,000-70,000 in Mon State and about 100,000 in northern Rakhine State.

101. As soon as objective factors and credible guarantees are in place for voluntary, safe and dignified repatriation, the refugees should be allowed to return to Myanmar. The Special Rapporteur believes that both Myanmar and its neighbours have an obvious interest in resolving the matter of the ongoing insecurity along their common borders, with the related transnational issues of refugees, displaced persons, trafficking, and exploitation of natural resources. A peaceful settlement of these matters is also in the interests of the Association of South-East Asian Nations (ASEAN) and the region as a whole.

C. Child soldiers

102. The Special Rapporteur thinks that the whole issue of the voluntary and/or forced conscription of children into the armed forces and the various ways in which they are used by these forces needs to be factually established on the basis of first-hand evidence. Reports that he has received show that much of the current knowledge of the issue seems to lack a solid factual basis for what is presented nevertheless as a widespread phenomenon and pattern. To raise the issue in a convincing manner requires thorough research, documentation, and establishment and verification of the facts, which the Special Rapporteur intends to start during his next fact-finding missions.

D. Violence against women

103. The Special Rapporteur raised the issue of violence against women during his meeting with the Myanmar National Committee for Women's Affairs (MNCWA), a national mechanism for women's affairs. From the briefing received there and other related information in his possession, it is clear that the Government of Myanmar recognizes the existence of various forms of violence against women in Myanmar, but lacks accurate data to define comprehensively the situation across the country.

104. The Special Rapporteur was informed that from the limited information gathered from hospitals, the judiciary and police departments, it has been found that violence against women exists in Myanmar in two forms: domestic violence and violence in the community, with the former being more prevalent. As the first step in tackling the problem, in 1997 the MNCWA launched a nationwide survey on domestic (marital) violence. In 1997/98, a survey was conducted in Yangon Division, in 1999 in Mandalay, Magwe and Taninthryi Divisions and Shan State. Surveys have now been carried out in all the remaining states and divisions, but their findings have yet to be finalized at the national level. The preliminary findings of the research reveal that there is more mental violence than physical violence in the domestic context. Poverty, alcoholism, incompatibility with in-laws and adultery are reported to be main causes of violence. The majority of victims do not seek help from anyone in view of a social stigma against women making their personal affairs public. Some ask help from parents, and only a few from community elders or neighbours.

105. The Special Rapporteur was informed that as a follow-up to the survey, more than 24 counselling centres have been established in the country to provide help and support for the victims of domestic violence. The MNCWA also set up a committee to receive communications regarding the incidence of violence against women. In 2000 the committee received and channelled to appropriate departments 2,034 complaints.

106. Trafficking is seen by the MNCWA as a form of violence against women, and a special national task force comprising representatives of the Government and NGOs has been created to deal with the problem. So far its main focus has been on prevention and promotion of education and income-generation. Under the Ministry of Progress of Border Areas and National Races,

eight training centres have been established to provide vocational training to girls and women as a measure to address one of the root causes of trafficking. Rehabilitation/protection work has been limited in view of the scarcity of reported cases within Myanmar and the lack of the possibility to pursue cases outside the country. Accordingly, the extent of the problem remains unknown.

107. The Special Rapporteur welcomes the efforts of the Government of Myanmar to address the issue of violence against women and encourages it to broaden its focus to cover violence in the community, particularly in areas of conflict between the army and armed groups where the most serious forms of violence against women are reported.

E. Humanitarian aid

108. In his interim report and statement to the fifty-sixth session of the General Assembly, the Special Rapporteur noted the existence of a complex humanitarian situation in Myanmar, which threatens to worsen unless it is promptly and properly addressed by all concerned. Among the areas in most need of significant improvement is the situation of vulnerable groups, inter alia the poor, children, women and ethnic minorities and, in particular, those among them who have become internally displaced in zones of conflict between the army and armed groups.

109. In the view of the Special Rapporteur, the human, technical and financial means to address the situation effectively exist, domestically and/or internationally. In the wake of international sanctions, multilateral and bilateral assistance had shrunk and the United Nations has emerged as the largest source of aid, which is mainly humanitarian. At present, 68 per cent of official development assistance (ODA) is channelled through United Nations agencies operating in the country.[16] In this regard, the Special Rapporteur supports the call of the United Nations Country Team for an increase in ODA for Myanmar through the United Nations system and for a more consistent approach to the issue of assistance to Myanmar on the part of the policy-making bodies of United Nations agencies (i.e. executive/governing boards).

110. The Special Rapporteur is aware that to address the humanitarian situation more adequately, the commitment of the Government should go hand in hand with the involvement of the NLD in the planning and managing of international humanitarian assistance. It is also necessary to have reliable data and look into the logistical aspect of humanitarian assistance. The creation of some sort of international assistance advisory body has been proposed by some as one possible way of securing the safe delivery of humanitarian assistance.

111. One proposed possibility was the establishment of a functional committee with a mixed composition under the patronage of the United Nations coordination system with the role of monitoring and evaluating assistance provided to Myanmar. Such a committee could be one element of the trust-building process initiated through the dialogue between the Government and the NLD, thereby linking national peace/reconciliation promotion and political consultation and participation of key stake-holders: the Government, the democratic opposition, ethnic groups, NGOs and women. At the same time, such a committee could create a favourable environment for international assistance to the country. The United Nations Country Team-sponsored programme on combating HIV/AIDS could be one possible entry point.

112. The Special Rapporteur welcomes the valuable assistance efforts of the international NGOs which operate among the most vulnerable groups in Myanmar with complete control over and monitoring of their assistance. In fact, at present their capacity for operation is much greater than the current level of aid channelled through them. There are 29 international NGOs operating in Myanmar, of which 16 are subcontracted by United Nations agencies. Assistance from these NGOs has increased from $4.5 million in 1999 to more than $7 million in 2000.[17] They provide direct services such as food, health care and shelter and/or support development projects that help build local capacities.

113. The Special Rapporteur is convinced that the humanitarian situation requires encouraging the international NGOs to develop their activities. In order for them to do so, it is essential that the relationship between the Government of Myanmar and the international NGOs operating in the country continue to improve. In this regard, he is concerned about recent restrictive measures affecting their operation. Last June there were reportedly two isolated incidents involving the brief detention of some NGOs staff. Last July the Department of Health instructed all those NGOs working with it that every time they travelled to the field, they must be accompanied by department staff. Since September 2001 the expatriate staff and their family members are no longer eligible for gratis visas and there are difficulties regarding the importation, purchase and registration of vehicles. In the last two to three months, NGOs were not allowed to have more than three staff for educational activities. The Special Rapporteur stresses the crucial importance of creating a positive environment for the operation of international NGOs and hopes that these restrictions will soon be rescinded. It is in the best interests of the SPDC to demonstrate to the international community that these organizations do operate freely, within the laws of the country, thus facilitating their access to funding and contributing to the alleviation of the existing humanitarian situation.

IV. CONCLUDING OBSERVATIONS

114. The Special Rapporteur does not underestimate the fragility of progress and that it sometimes may be hampered by the many factors that are involved in the present situation. While he recognizes that the complexity of the situation in Myanmar requires some patience, the confidence-building process is already one year old and in the opinion of many observers is going rather slowly. Undeniably, the political atmosphere in the country is very gradually improving and some basis of mutual understanding has begun to emerge between the SPDC and NLD. Precisely because of these positive signs, one would hope that the confidence building would be followed by bolder moves that could lead the political initiatives engaged a year ago to the next phase.

115. It is important that the SPDC carry forward the present political process. In this regard, the Special Rapporteur notes the following:

(a) The human rights capacity of the State must be enhanced in accordance with the need for the prevention and monitoring of human rights violations and for the State agents involved in those violations to be held accountable;

(b) The full and unconditional release of all political prisoners should proceed more rapidly. Given the very slow pace of releases and the large number of political prisoners remaining, it is important to find ways to speed up the process;

(c) It is necessary for the Government to promote a substantial enlargement of space for civil society, political parties and ethnic nationalities to function, by creating conditions for the full exercise of basic political freedoms. In particular, the Government should consider revising the existing laws on the organization of political parties with a view to creating non-discriminatory conditions for the exercise of the right to freedom of political association. Transition experiences elsewhere show that without effective progress towards the rule of law and impartial institutions, a political transition could result in a continuation of many exploitative and non-democratic practices and, quite possibly, a high level of violence.[18] The people of Myanmar cannot wait for democratization to begin to rebuild and consolidate civil society organizations. Likewise, the international community should not wait for the conclusion of a transition process to support autonomous and independent projects that could contribute to the activation of civil society. Thus, it is more important than ever to ensure that political parties and civil society organizations function freely;

(d) The Government must create conditions for the equal application of minimum standards for the treatment of prisoners, addressing at the same time the pockets of vulnerability among the prison population such as the sick, the elderly, juveniles and women, especially those with children and who are pregnant;

(e) More resources need to be allocated to the reform of the education sector, in particular tertiary education and investments better targeted to address critical areas such as teacher training and strengthening evenly the material base of universities and institutes;

(f) Broad-based social mobilization and advocacy is essential for preventive and curative action against HIV/AIDS; this should be integrated into a national comprehensive and sustained campaign led by the highest levels of authority and supported by appropriate international assistance;

(g) The situation of human rights in Myanmar would benefit from broadening the focus of efforts to combat violence against women to cover violence in the community, particularly in areas of conflict between the army and armed groups where the most serious forms of violence against women are reported;

(h) The Government, its armed forces and the armed opposition groups should exercise maximum restraint and respect international humanitarian law relating to the protection of civilians and prisoners, and consider alternative avenues for resolving their differences notably through political dialogue;

(i) In order to address the humanitarian situation more adequately, it is crucial that the commitment of the Government go hand in hand with the involvement of the NLD in the planning and managing of international humanitarian assistance;

(j) It is time to start a substantive dialogue with the leaders of the NLD and all other political parties and ethnic nationalities if the Government is serious about achieving national reconciliation and the restoration of democracy. Nothing can help Myanmar better in this regard than the building of democracy through an all-inclusive, accountable and fair process.

Notes

[1] The CRPP was established by the representatives of the NLD and ethnic nationalities' parties elected in the 1990 elections.

[2] The Special Rapporteur was unable to assess whether de-registrations had been effected in accordance with the law.

[3] Among such laws are the Emergency Provisions Act (1950), the Printers and Publishers Registration Act (1962), the Official Secrets Act (1948), State Law and Order Restoration Council (SLORC) Order 8/88 (1988), SLORC Order 5/96 (1996), the TV and Video Act (1996) and the Computer Science Law (1996).

[4] The news about releases of political prisoners started to be announced officially for the first time in January 2001. It is, however, unclear to the Special Rapporteur why such announcements appear to be directed at audiences outside Myanmar, as he understands that none of these releases has been reported in the official media.

[5] For instance, in October 2001 a total of 14 releases were reported (5 coinciding with the Special Rapporteur's visit, preceded by 1 and followed by another 8); in November, there were 8 more releases (all of them NLD members).

[6] The prison system is governed by the 1894 Manual of Rules for the Superintendence and Management of Jails in Burma, Part I.

[7] The daily diet for the staff and prisoners in camps is established by instructions issued on 6 February 1978, according to which prisoners should get every day 1 ounce of fish paste, 10 ounces of vegetables, 1 ounce of cooking oil and 4 ounces of dal, and 4 ounces of meat twice a week.

[8] According to the "Instructions for Providing Diet for the Prisoners in the Camps and State Building Projects" issued on 24 May 2001, prisoners in camps have a new daily ration of rice of 28 ounces, increased from 26 ounces.

[9] Remuneration appears to be different depending on the type of camps. According to notification No. 1/98 of 25 August 1998, 50 per cent of net profit gained from the New Life Agricultural Production Camps should be distributed among the labourers.

[10] Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention (No. 29): report of the High-Level Team (GB.282/4), ILO Governing Body, 282nd Session, Geneva, November 2001.

[11] Reportedly, the official policy also encourages distance learning to keep the student population dispersed.

[12] The USDA was created under the patronage of Senior General Than Shwe in 1993. It has two wings: 9 million junior members (10-18 years old) and 8 million senior members (older than 18). The Special Rapporteur has been told that the USDA's most significant activity is "awareness-raising": training courses in thematic areas (e.g., social welfare, Myanmar culture, foreign relations, etc.). Another important activity is participation in "nation-building" projects. Participation in these activities was said to be voluntary. Besides being devoted mostly to social welfare, the USDA was referred to in 1997 by General Maung Aye as an "ancillary national defence force".

[13] Asian Development Bank, "Economic Update. Myanmar", November 2001, p. 7.

[14] Ibid., p.6.

[15] Allegedly, some ceasefire groups also grow poppies.

[16] Asian Development Bank, op. cit., p. 8.

[17] Ibid.

[18] International Crisis Group, "Myanmar: The Role of Civil Society", 6 December 2001, Asia Report No. 27, p. 28.

Annex I

Programme of the fact-finding mission of the Special Rapporteur

Tuesday, 9 October 2001

11.35	Arrival in Yangon, welcome by Ambassador U Win Mra, Director-General of the International Organizations and Economic Department, Ministry of Foreign Affairs
12.30	Briefing with the United Nations Resident Coordinator
14.00	Call on H.E. U Win Aung, Minister for Foreign Affairs
16.00	Call on H.E. Colonel Tin Hlaing, Minister for Home Affairs
17.15	Meeting with the ICRC Head of delegation
19.00	Dinner hosted by Ambassador U Win Mra

Wednesday, 10 October 2001

09.30	Call on H.E. U Aung Toe, Chief Justice
10.30	Call on H.E. U Tha Tun, Attorney-General
11.30	Call on H.E. U Than Aung, Minister for Education
14.00	Call on H.E. Major General Ket Sein, Minister for Health
15.30	Call on H.E. U Tin Winn, Minister for Labour
17.00	Meeting with Daw Khin Khin Tun, Director, National Archives.
18.15	Meeting with various members of the diplomatic community (representatives of Bangladesh, Nepal, Sri Lanka, India, China, Egypt, the Russian Federation, Yugoslavia and Australia)
19.30	Meeting with the business community

Thursday, 11 October 2001

08.30	Meeting with diplomats from the ASEAN countries (representatives of Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, the Philippines, Singapore, Thailand and Viet Nam)

10.00	Meeting with members of subcommittees of the Human Rights Committee (chaired by H.E. U Khin Maung Win, Deputy Minister for Foreign Affairs)
11.30	Meeting with the Myanmar National Committee for Women's Affairs (Dr. Daw Khin Win Shwe, Dr. Daw May May Yi and members)
12.45	Briefing with the United Nations Country Team (UNICEF, WHO, UNDCP, FAO, UNHCR, UNDP)
14.00	Meeting with representatives of international NGOs
15.00	Meeting with the Ambassador of the United Kingdom
16.00	Courtesy call on H.E. Lieutenant General Khin Nyunt, Secretary-1 of the State Peace and Development Council
20.00	Meeting with diplomats from the OECD countries (representatives of France, Germany, Italy, Japan, Republic of Korea and United States)

Friday, 12 October 2001

09.00	Meeting/seminar with Daw Ni Ni Myint, Director-General of the Department of Historical Research, U Thaw Kaung and Dr. Tun Aung Chain at Yangon University, followed by a meeting with teachers and students
10.30	Meeting with U Myo Myint, Director-General, Department of Religious Affairs, Ministry of Religious Affairs
11.30	Meeting with Dr. Hla Pe, Rector of the International Theravada Buddhist Missionary University, Prof. U Sat Tun Hmat Win and Bamaw Sayadaw of the same university
13.00	Meeting with Ambassador U Win Mra
16.00	Meeting at the Union Solidarity and Development Association (H.E. U Than Aung, Minister for Education)
17.00	Meeting with representatives of a number of groups participating in the ceasefire
18.00	Meeting with representatives of ethnic nationalities' parties of the Committee Representing the People's Parliament

Saturday, 13 October 2001

06.00	Arrival in Lashio
10.10	Meeting with the Commander of North East Command, Thiha Thur Tin Aung Myint Oo
12.00	Visit to Lashio prison
15.30	Proceed to Wa regions by helicopter to meet with Wa leaders and visit Namtit (U Airon Ike, U Li Si U, Plein Ka, Chao Ni Zi Yao, Hu Bao U Chan)
Evening	Return to Lashio

Sunday, 14 October 2001

08.00	Leave Lashio for visit to the border town of Muse by helicopter (Colonel Myint Thein)
13.00	Return to Lashio by helicopter
Afternoon	Visit to the Hton Bo labour camp

Monday, 15 October 2001

08.00	Arrival in Mandalay
10.00	Meeting with the Commander of the Central Command, Major General Ye Myint
12.00	Meeting at the National League for Democracy (NLD) branch office in Mandalay

Tuesday, 16 October 2001

Morning	Arrival in Sagaing; visit to the University for Development of National Races
Afternoon	Visit to the Mandalay central prison

Wednesday, 17 October 2001

08.00	Return to Yangon
13.00	Meeting with the United Nations Resident Coordinator

16.00 Meeting with H.E. U Win Aung, Minister for Foreign Affairs

17.00 Meeting with Daw Aung San Suu Kyi, General Secretary of the NLD, and senior NLD members

19.00 Meeting with H.E. U Khin Maung Win, Deputy Minister for Foreign Affairs

19.50 Departure of the Special Rapporteur

Thursday, 18 October 2001

Work of the team at the UNDP office

Friday, 19 October 2001

11.00 Meeting of mission team with the NLD Executive Committee at its headquarters

15.00 Meeting of mission team with international NGOs and ICRC Head of delegation

Saturday, 20 October 2001

17.00 Meeting of mission team with the United Nations Resident Coordinator

19.50 Departure of team

Annex II

Humanitarian cases

1. **Myint Maung Maung**, male, aged about 30; reportedly detained in Mandalay central prison; reportedly transferred to a hospital near the prison in June 2001 after he become paralysed in both legs.

2. **U Tun Aung Kyaw**, teacher aged about 50; arrested and sentenced in 1990 to five years at hard labour; contracted tuberculosis in prison; released in 1994 but rearrested while receiving anti-tuberculosis treatment in hospital and sentenced to seven years at hard labour for possessing a book written by a foreign author about transitions from authoritarian to democratic political systems; visited by the Special Rapporteur on 15 October 2001; continues to suffer from chronic lung ailments and frequent attacks of fever.

3. **U Aye Tha Aung** – Secretary of the CRPP representing four ethnic nationality parties; arrested and reportedly given three sentences of seven years on three separate charges (21 years in prison) and detained in Insein prison; reportedly seriously ill and held in the section of the Yangon General Hospital reserved for prisoners.

4. **U Win Tin**, male, aged 71, well-known journalist and writer, member of the Central Executive Committee (CEC) of the NLD, of which he is the only remaining senior figure detained; held since 1989 in Insein prison where he is serving a total of 20 years' imprisonment; health reportedly very poor due to his age, treatment, and his conditions of imprisonment.

5. **Paw U Tun**, Chairman of ABSFU; arrested on 24 March 1989 in connection with the activities of the student union; detained in Sittwe, Rakhine State, sentenced to 20 years' imprisonment, commuted to 10 years in 1993; his prison term expired in March 1999; his health, both physical and mental, is a matter of serious concern.

6. **Khin Maung Yi (alias Tin Aye)**, ABSFU CEC member; reportedly arrested on 13 July 1989, for alleged connections with the defunct Communist Party of Burma; sentenced to 20 years in prison in Mandalay, commuted to 10 years in 1993; his term expired in July 1999.

7. **Htwe Myint**, aged about 72 years, reportedly a member of the Democracy Party detained in Insein since June 1995 for allegedly distributing political pamphlets critical of the Government; health is reportedly poor.

8. **Khin Ma Than (Nge Ma Ma Than)**, female, aged about 64; arrested in June 1997 and sentenced to 10 years in prison for alleged high treason and violating the unlawful association act; detained in Insein prison; her age and prison conditions are matters of concern.

9. **Nai Ngwe Thein**, male, aged about 76; arrested for the third time in September 1998 (previous arrests 1991 and 1994) in connection with his alleged support for the CRPP and sentenced to 14 years in prison, which he is serving in Insein prison; his age and poor detention conditions are matters of concern.

10. **Than Chaung**, male, aged about 72; coffee shop owner arrested in December 1999 for playing a foreign Voice of America radio broadcast loudly in his shop, and sentenced to two years in prison, which he serves in Thayet.

11. **Thein Dan (or Tan)**, male, aged about 70, publisher and NLD executive committee member; arrested in September 1990 for peaceful expression of his political views and sentenced to 17 years in prison, commuted to 10 years in 1993; detained in Thayet prison.

12. **Dr. Zaw Min**, male, aged 42; medical doctor arrested in 1989 for alleged contacts with illegal political organizations and sentenced to 20 years in prison, commuted to 10 in 1993, which he is serving in Mandalay central prison; visited and interviewed by the Special Rapporteur on 15 October 2001; appeared to be psychologically disturbed as a result of his arrest and detention.

Annex III

Persons who reportedly received prison terms for communicating, trying or intending to communicate, or being suspected of communicating human rights information to the United Nations

A. Persons allegedly detained in connection with the visit to Myanmar of the former Special Rapporteur, Mr. Y. Yokota

These persons were arrested in August 1994; they reportedly continue to be detained in Myitkyina prison, Kachin State. Charges against them reportedly include communicating, or attempting to communicate information to the Special Rapporteur, Mr. Y. Yokota in connection with his visit (Ms. San San Nweh, arrested with them, was reportedly released on 18 July 2001):

1. Khin Zaw Win (alias Kelvin)
2. Sein Hla Oo
3. Khin Maung Shwe

B. Other persons who reportedly received additional sentences for having communicated, or attempting or intending to communicate information on human rights to the United Nations:

1. **Ba Myo Thein**, born 1954, agricultural technician, arrested in 1990 and sentenced to seven years in prison on charges of contact with exiled opposition; given an additional seven years for allegedly signing a letter on prison conditions that was to be sent to United Nations; detained in Pathein prison.

2. **Dr. Zaw Myint Maung**, alias Dr. Myint Aung, born 1951, medical doctor, MP-elect for the NLD; arrested in November 1990; sentenced to 10 years in prison for allegedly participating in discussions about the formation of a parallel government in Mandalay; was among a group of prisoners in Insein who were given further prison terms (seven years) for allegedly writing to the Special Rapporteur about prison conditions; detained in Myitkyinia prison.

3. **Kyaw Min Yu** (alias Jimmy), student of physics, reportedly arrested in 1988/89 for peaceful political activities and sentenced to 20 years in prison (commuted to 10 years in 1993); was given seven additional years in 1996 for alleged involvement in plans to distribute news from foreign broadcasts in Insein prison and to contact the United Nations Commission on Human Rights about prison conditions; detained in Tharawaddy prison.

4. **Hla Tun Aung**, arrested in 1996 and sentenced to seven years in prison for allegedly "spreading false information to destabilize peace and tranquillity". Charges reportedly included making a videotape illustrating problems relating to rice production, which was intended to be sent to the United Nations Commission on Human Rights through the NLD; very poor health reported; detained in Myitkyina prison.

5. **Kan Shein**, rice farmer, arrested in 1996 and reportedly detained for seven years in connection with the same case as 4. above; detained in Thayet prison.

6. **Po Aye**, arrested in 1996 and reportedly detained for seven years in connection with the same case as in 4. above; detained in Mandalay prison.

7. **Maung (Ko Thein Lin)**, student arrested in 1996 and sentenced to seven years in prison, in connection with the same case as in 4. above; detained in Myitkyina prison.

8. **Kyi Pe Kyaw**, arrested in 1995 and sentenced to seven years in prison for allegedly illustrating with symbols deemed critical of the Government a magazine produced in Insein prison and for allegedly participating in a discussion to organize the sending of information on prison conditions to the United Nations; detained in Myitkyina.

9. **Phyo Min Thein**, arrested in 1991 for political activities and sentenced to 14 years; reportedly given an additional sentence in connection with same case as in 8. above; detained in Toungoo.

10. **Myo Myint Myein**, born 1960, editor of satirical magazine What is happening, deemed as "aiming at making people misunderstand the government and defence forces"; arrested on 12 September 1990 and given seven years in prison, with U Sein Hlaing, for alleged political activities. Was reportedly given another seven years in 1996 for allegedly preparing a magazine in Insein prison and discussing sending information to the Special Rapporteur; detained in Tharawaddy prison.

Annex IV

List of persons interviewed by the Special Rapporteur during his visits to Lashio and Mandalay

Interviews with the following persons were conducted completely confidentially (i.e. without the presence of a prison guard or official):

Detainees in Lashio prison (interviewed on 13 October 2001)

Than Sein, male, aged 30
Aye Soe, female, aged 29

Detainees in Hton-Bo 1 male labour camp (interviewed on 14 October 2001)

Saw Gyi, male, aged 31
Soe Myint Oo, male, aged 24

Detainees in Mandalay central prison (interviewed on 15 October 2001)

Khin Mar Kyi, female, aged 47
Tun Aung Kyaw, male aged about 50
Zaw Min, male, aged 42

Released prisoner (interviewed on 16 October 2001)

Aung Soe, male, released from Myitkyina prison in July 2001.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the Sudan

Report of the Special Rapporteur, Gerhart Baum, submitted in accordance with Commission resolution 2001/18

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Executive summary

The report of the Special Rapporteur focuses on his last visit to the Sudan which took place from 2-14 October 2001. The visit included Khartoum, Bentiu, Rubkona and Paryang (Unity State), Rumbek (southern Sudan) as well as Nairobi and Lokichokio (Kenya).

The international context in which the mission took place was marked by the lifting of United Nations sanctions, the appointment of Senator John Danforth as United States Presidential Envoy for Peace and his first visit to the Sudan; and the European Union (EU) troika mission to the Sudan (7-9 December 2001).

Peace discussions, including the initiative brokered by the Inter-Governmental Authority on Development (IGAD), the joint initiative by the Governments of Egypt and the Libyan Arab Jamahiriya (Egyptian-Libyan initiative) and the Nigerian facilitation, did not make any significant progress.

The Special Rapporteur welcomes Senator Danforth's mission to the Sudan and hopes that, by setting pragmatic benchmarks, it will contribute to create a conducive environment to improve conditions for peace-building.

According to the Special Rapporteur, the overall human rights situation has not improved and serious concern was repeatedly expressed about the amendment to the National Security Forces Act and the role of security agents. Cases of suppression of political freedoms' particularly targeting journalists as well as human rights activists were also reported.

As for the humanitarian situation, denial of access continued to be used as a military strategy by both the Government and the Sudan People's Liberation Movement/Army (SPLM/A), particularly in areas where the population is more needy. The plight of internally displaced persons remains extremely serious. Overall, the situation has worsened, with more denials of access, more conditions imposed on humanitarian assistance and more confusion about who is in control. Bombing incidents also continued.

In order to make an assessment of the impact of oil exploitation on the situation of human rights, the Special Rapporteur visited the oil area and interviewed IDPs coming from Upper Nile in Khartoum and in southern Sudan. He noted that oil exploitation continued to cause widespread displacement and access to the area remains extremely difficult since access to most of the airstrips is denied, which also results in lack of human rights monitoring in the region. Also, he remains concerned at the lack of transparency concerning the use of oil revenues.

Abductions in Bahr al-Ghazal continued, though in decreasing numbers since March 2001. Progress made in the last months by the Committee for the Eradication of Abductions of Women and Children (CEAWC) continued to be too slow. There continues to be a need for a massive advocacy campaign.

Regarding the situation in the SPLM/A-held areas, the Special Rapporteur believes that the extreme weakness of the civil society in southern Sudan and the need to strengthen it remain the major issues in southern Sudan.

In his conclusions and recommendations, the Special Rapporteur addressed both the Government and the SPLM/A, highlighting the following aspects:

(a) Normalization and transition from emergency to democracy should become a matter of urgency for the Government;

(b) As for violations of human rights and humanitarian law within the conflict, the Special Rapporteur regrets that military developments - for which both parties to the conflict are responsible - continued to impact adversely the human rights situation of the civilian population; the Special Rapporteur reiterates his appeal to the Government for a halt to the bombing of civilian targets. While as an urgent humanitarian measure, unhindered access should be granted to all needy areas, at the political level more serious efforts should be put in place to promote peace and establish democratic structures which are a condition for a lasting peace. Human rights must be an integral part of the peace agenda;

(c) The Special Rapporteur equally condemns SPLM/A practices such as the use of civilian installations for military purposes and the setting up of military installations in close proximity to civilian ones;

(d) The SPLM should develop genuine democratic structures, which is a crucial condition for the implementation of the right to self-determination. While encouraging donor support, the Special Rapporteur believes that the SPLM/A should bear more responsibility for addressing the needs of the people living in areas under its control, particularly where it continues to be seen as an occupying army and where peace has been established.

Finally, the Special Rapporteur appealed to donors to continue to invest in peace in the Sudan and see the phases of peace, reconstruction and development in a more integrated manner.

As for the oil issue, the Special Rapporteur, while recognizing that oil exploitation has become increasingly important for the economic development of the country, reiterates his strong belief that the right to development cannot justify the disregard of other human rights. The Special Rapporteur believes that oil exploitation is closely linked to the conflict which, although it contains a religious component, is mainly a war for the control of resources and, thus, power. Bearing in mind the adverse impact of oil exploitation on the human rights situation, he therefore remains convinced that the monitoring of the human rights situation in the oilfields, as well as considering the human rights-related social and economic implications deriving from oil exploitation, including the use of oil revenues, are part and parcel of his mandate as Special Rapporteur on the situation of human rights in the Sudan, which includes both civil and political rights as well as social, economic and cultural rights. He believes that, in the context of the Sudan's right to development, the Government should create an environment conducive to the granting of development assistance. In addition, he also remains of the view that any solution will have to be based on a wide consensus among all affected parties.

Regarding the programme of technical cooperation of the Office of the High Commissioner for Human Rights, the Special Rapporteur noted the ongoing discussions and will follow any new developments in this field.

I. INTRODUCTION

1. Following his first mission to the Sudan and Kenya in March 2001 and the presentation of his oral report to the Commission on Human Rights at its fifty-seventh session, the Special Rapporteur travelled to London in June 2001, to the Sudan and Kenya in October 2001 and to Washington and New York in November 2001. While in London, on 26 and 27 June he met with several international and Sudanese London-based non-governmental organizations as well as the Archbishop of Canterbury to discuss the situation of human rights in the Sudan.

2. From 2-14 October, the Special Rapporteur travelled to the Sudan and Kenya. He visited Khartoum, Bentiu, Rubkona and Paryang in oil-rich Unity State. He then travelled to Kenya where he visited Nairobi and Lokichokio on his way to southern Sudan, where he visited Rumbek.

3. The Special Rapporteur acknowledges the very good cooperation he received from the Government of the Sudan throughout his visit. Particular thanks go to the Vice-President, Ali Osman Mohammed Taha, the ministers met and the Rapporteur of the Advisory Council for Human Rights, as well as to the Office of the United Nations Resident Coordinator in Khartoum, the Office of the High Commissioner for Human Rights, UNICEF, the Office for the Coordination of Humanitarian Affairs, Operation Lifeline Sudan (OLS), and all those who contributed to a successful visit.

4. From 1-9 November, the Special Rapporteur visited Washington and New York where he met with officials of the United States Government, members of the United States Congress, members of the team of the new Presidential Envoy for Peace, John Danforth, United Nations officials, international NGOs, representatives of Churches, and several government representatives, including of the European Union.

5. On 8 November he presented his interim report (A/56/336) to the fifty-sixth session of the General Assembly.

6. The present report includes the findings of the mission as well as an updating of the overall situation based on information collected since then.

7. The Special Rapporteur plans to conduct his third visit to the country in February/March 2002. His findings will be reflected in his oral presentation to the Commission on Human Rights and will be the basis of his next interim report to the General Assembly at its fifty-seventh session.

II. POLITICAL CONTEXT IN WHICH THE MISSION TO THE SUDAN TOOK PLACE

8. The initiative brokered by the Inter-Governmental Authority on Development (IGAD) continued to fail to bring the parties together in a serious attempt to discuss peace in the Sudan. Despite the appointment of a new IGAD Special Envoy, General Lazarus Sumbeiywo, an IGAD

meeting that had been scheduled for 20 November was postponed. The Special Rapporteur is therefore looking forward to the outcome of the next IGAD meeting scheduled to take place from 7 to 11 January 2002 in Khartoum.

9. The joint initiative by the Governments of Egypt and the Libyan Arab Jamahiriya (Egyptian-Libyan Initiative) continued to be rejected by most southern Sudanese, who see it as partial and lacking credibility, mostly because of its failure to include the right to self-determination for southern Sudan. A further difficulty seems to derive from the lack of a secretariat.

10. The Nigerian facilitation did not mark any breakthrough either. The Abuja Conference, scheduled for 15-17 November, was postponed indefinitely.

11. On 28 September, the United Nations Security Council lifted sanctions against the Sudan, which had been imposed in 1995.

12. The appointment of Senator Danforth as United States Presidential Envoy for Peace and the recent United States policy review, particularly following the events of 11 September, may have an impact on the situation of human rights in the Sudan. On 12 November, Senator Danforth, started his four-day mission to Khartoum. The first outcome of the visit was the setting-up of the following confidence-building measures: continuous access to the Nuba Mountains for relief purposes; specified periods of tranquillity for humanitarian projects to take place; a cessation of bombing and other military attacks on the civilian population of southern Sudan; and an end to abductions of women and children. The Special Rapporteur, while welcoming the United States initiative, highlights the importance of setting specific benchmarks for those human rights which are not directly linked to the conflict. The Special Rapporteur also hopes that Senator Danforth's forthcoming mission to the Sudan will be successful.

13. Finally, following the European Union (EU) troika mission to the Sudan (7-9 December 2001), which marked the completion of the second year of the critical dialogue between the EU and the Government of the Sudan, "the parties agreed on the need for the continuation and intensification of this dialogue for a further year, allowing for regular joint assessments of concrete and verifiable progress achieved with respect to democracy and to human rights. The progress made in the peace process will also be assessed as a matter of high priority".[1]

14. In this connection, the Special Rapporteur noted the commitments made by the Government of the Sudan in several areas, including in the area of human rights and with regard to the peace process. He will continue to follow with interest any relevant developments relating to the Government's concrete follow-up action on the above-mentioned benchmarks.

III. MAIN ISSUES ADDRESSED DURING THE MISSION

A. Transition to democracy

15. In his interim report, the Special Rapporteur acknowledged the progress made by the Sudanese Government in the transition to democracy until the end of the year 2000 and stated

that the Sudan had started along a path which could only be considered positive, especially in comparison with other States, including those in the region. He also noted, however, that the trend had been discontinued as from December 2000.

16. Since the presentation of the interim report, despite the reconvening of the National Assembly in April 2001, the Special Rapporteur continued to receive information to the effect that the overall situation of human rights in the Sudan has not improved. In addition, no institutional or legal reform, in particular relating to the extension of the powers of the security organs and the absence of judicial control over them, has occurred.

17. Although the authorities continued to claim that the emergency declaration has not affected the Bill of Rights, the Special Rapporteur repeatedly addressed the issue of the extension of the state of emergency, declared by President al-Bashir on 12 December 1999,[2] until the end of 2001.

18. During his stay in Khartoum, the Special Rapporteur met with representatives of the traditional northern opposition parties, namely the Umma Party, the Democratic Unionist Party (DUP) and the Communist Party, as well as representatives of the Popular National Congress (PNC). While some individuals were able to contact the Special Rapporteur to discuss specific issues relating to alleged human rights violations, others, including representatives of political opposition parties, were only able to talk to him after overcoming difficulties caused by security agents.

19. During the meetings held, a number of very serious concerns were expressed to the Special Rapporteur, which left him under the impression that a credibility gap still remains to be bridged by the Government. More specifically, extremely serious concern was repeatedly expressed about the role of security agents, who are invariably described as putting human rights and fundamental freedoms in jeopardy.

20. As he highlighted in paragraph 75 of his interim report, the Special Rapporteur finds it alarming that security forces continued a campaign of harassment, intimidation and persecution, targeting political opponents and human rights defenders, by means of arbitrary arrests, followed by protracted, at times incommunicado, arbitrary detention without judicial review. Practices such as reporting, whereby an individual is forced to report to the police on a regular basis, constitute an obvious form of harassment which totally disrupts the daily life of the individual concerned.

21. As for freedom of expression, the Special Rapporteur was informed that censorship had increased as of December 2000. It was reported that censorship is at times selective and discriminatory insofar as one newspaper is sometimes prevented from publishing articles that other newspapers are allowed to print. From information gathered, it would seem that the National Press Council often failed to mount a significant defence of freedom of expression. As a result of the generally held belief that no article is immune from censorship, people's interest in newspapers has consistently decreased, to the point that most newspapers are facing financial difficulties.

22. Despite reiterated denials from official sources that censorship existed, on 28 November, Information Minister Mahdi Ibrahim met with editors-in-chief to inform them that the previous day President al-Beshir had ordered that pre-printing censorship be lifted from 12 dailies while remaining in force with respect to 4 others, namely Alwan, AlRai Al Akher, Al-Watan and The Khartoum Monitor, which would continue to be heavily censored. On 8 December, censorship was reportedly lifted from the four remaining newspapers as well. The Special Rapporteur welcomes this positive development and will continue to monitor the situation in this respect.

23. The Special Rapporteur was also informed that, due to its high cost, very few people can access the Internet regularly, thus making it an unsuitable medium for information-sharing and communication.

24. Finally, the Special Rapporteur was informed of a number of cases of suppression of political freedoms, targeting journalists as well as human rights activists. Details are provided in the relevant section of the present report.

25. Particular concern was reiterated at the plight of internally displaced persons (IDPs), particularly women and children. With a view to familiarizing himself with their conditions, the Special Rapporteur visited two IDP camps in the area around Khartoum, where he met with a number of IDPs. Some of them had been in the camp for over 10 years, while others had more recently come from oil-rich western Upper Nile. Most of them continue to be deprived of shelter, education, and access to food and medical care. Large families are left without assistance. Men are reportedly not allowed to work unless they have spent two years in the military; they are therefore left without means to provide for their families. Unqualified women can only resort to alcohol-brewing, which is a crime under Shariah law. In most cases, they are arrested and their children are left alone. School remains a luxury for most of the children, owing to the high fees. In addition, only primary schools are available in Waad al-Bashir IDP camp.

26. In this connection, the Special Rapporteur welcomes the long-awaited visit of the Special Representative of the Secretary-General on internally displaced persons, Francis Deng, to the Sudan, from 11 to 18 September, as well as the commitment of the Government to continue the efforts to address the problem of IDPs and effectively to follow-up the visit of the Special Representative, including through holding a conference on the subject of internal displacement in the near future. The Special Rapporteur will continue to monitor the follow-up to this commitment.

27. In talks with representatives of the Churches, the Special Rapporteur was informed that Christians continue to face discrimination, particularly regarding their right to freedom of movement. In particular, the Special Rapporteur was informed that all religious leaders travelling abroad have to go through a cumbersome security system, involving up to three hierarchical levels, in order to get an authorization to travel. Reportedly, the provision does not apply to Muslim leaders. Procedures to obtain visas are also particularly lengthy.

28. The Special Rapporteur was informed that the education system has a progressively increasing confessional character. Islam reportedly has a predominant role in school curricula to the point that teaching of Christianity in school is reportedly forbidden except outside the school,

on Fridays. In addition, media only devote one hour per week to Christianity. Church buildings continue to be confiscated, as was the case in el-Obeid where the local church was first transformed into a museum, then into a mosque. Churches are also prevented from buying land in residential areas for religious use and buildings constructed for worship are not allowed to bear religious symbols. Reportedly, the building of mosques does not seem to be subject to the same rules.

29. In this connection, the Special Rapporteur noted that the Government made the following commitments: (a) to establish an Advisory Council for Christians; and (b) to appoint Christians to senior positions within the Ministry for Religious Affairs. The Special Rapporteur will report on any follow-up taken in this respect when he presents his report to the Commission at its fifty-eighth session.

30. The Special Rapporteur, while welcoming the President's decision to release some political prisoners prior to his visit, namely the representatives of the National Democratic Alliance (NDA) arrested on 6 December 2000, and to drop the criminal charges against the former Speaker of the National Assembly, Hassan al-Turabi, deplores the fact that Mr. al-Turabi continues to be detained under house arrest and that members of the PNC as well as other opposition groups continue to face harassment.

31. Since his visit in March, the amendment to the National Security Forces Act, to which the Special Rapporteur had devoted particular attention, was endorsed by the National Assembly. In the course of his latest visit, the Special Rapporteur had the opportunity to discuss this development in several meetings with officials, including members of the Constitutional Court, as well as with independent jurists. The new amendment allows for detention to be prolonged for over 60 days and does not foresee any judicial review except by the Constitutional Court. In other words, there are no intermediary instances, hence no right of appeal.

32. In addition, the Special Rapporteur was disturbed to receive contradictory information regarding the role actually played by the Constitutional Court. While on one hand he was informed by one Constitutional Court judge that none of the political detainees had filed a single complaint with the Constitutional Court, a colleague of his stated that some PNC members had indeed referred their case to the Constitutional Court. Also, other relevant sources, who confirmed the latter statement, also informed the Special Rapporteur that the fees for filing applications and obtaining files are relatively high, and cases are judged in closed sessions and reportedly only one judge takes the final decision.

B. Selected individual human rights cases

33. During the final meeting with the Rapporteur of the Advisory Council for Human Rights, the Special Rapporteur transmitted a list of selected cases of allegations of human rights violations for the Government's follow-up action. The cases included were either reflected in the interim report of the Special Rapporteur or had occurred during the Special Rapporteur's stay in Khartoum.

34. Since his first visit to the country in March 2001, in response to information received the Special Rapporteur sent eight joint urgent appeals with the relevant special rapporteurs, mostly regarding violations of the right to freedom of expression. In the present report, he wishes to highlight the following selected cases, which were received after the submission of the interim report to the General Assembly and are presented in reverse chronological order.

35. On 22 November 2001, Sudanese authorities reportedly detained journalists after they allegedly marched to the Ministry of Information to protest a decision by censors to ban the publication of an article in the newspaper Al-Watan on corruption. Those reportedly arrested were: Sidahmed Alkhalifa, Ahmed Alhabou, Mohmaed AlNa'iam, AlFatih Mieka, Ms. Majdoleen Mohamed, Yahya Mahir, Salah Almalieh, Mustafa Abu Alazayim, Ms. Ragya Hassan, Ms. Sumaya Handosa, Isam Abass, Mustafa Mohammed Hassab Alla, Abd Algaleel Khalifa, Mohamed Abdalla Khalifa, Mohamed Abdalla alshiekh, Mujahid Abdalla, Mustafa Ahmed Ali, Alghali Salih, Waleed, Mubarak Jaboor, Bakri Suliman and Nasir Salah Aldin. It is alleged that the journalists were taken to the police station where they were forced to stand against a wall in the sun with their hands above their heads for many hours. The three women were reportedly separated from their colleagues and forced to sit in one chair for a long time.

36. Security officials had reportedly raided the offices of Al-Watan in the evening of 19 November with a view to preventing the publication of an article about the seizure of more than 2 billion Sudanese pounds (over 800,000 United States dollars) worth of expired medicines and the arrest of a number of merchants who were continuing to sell them in Omdurman. Following a press conference about 50 journalists marched peacefully through the streets, their mouths covered with pieces of cloth, to protest against censorship. Reportedly, riot police stopped them on their return and arrested the 22 journalists. Some video material was also confiscated.

37. During the night of 24 October, BBC and Reuters correspondent Alfred Taban and Nhial Bol, general manager of the independent daily The Khartoum Monitor, were reportedly arrested. Sources stressed that it was the third time since the beginning of the year that Mr. Taban had been arrested "for no reason". He was reportedly arrested at home by plain-clothes members of the security forces. The authorities did not give any reason for these arrests.

38. Immediately after his departure from Khartoum on 9 October, the Special Rapporteur was informed of a series of operations allegedly launched by the Sudanese security authorities against several civil society organizations. The following organizations were targeted: Abdulkareem Margani Cultural Centre, Centre for Sudanese Studies, Gender Centre, Amal Centre for the Rehabilitation of Victims of Physical and Mental Trauma and Khartoum Centre for Human Rights Studies. According to the information received, the director of the Centre for Sudanese Studies, Dr. Hydar Ibrahim Ali, was summoned to security forces headquarters on 9 October. He was reportedly interrogated about the activities of the Centre, in particular a public symposium which had been held on 7 October, and was ordered to suspend all the Centre's activities until further notice. Sources also reported that Hydar Al-halab, Director of the Abdulkareem Margani Cultural Centre, was also summoned on the same day, together with the Director of the Gender Centre. Faisal Al-bagir, a member of the staff of the Khartoum

Centre for Human Rights Studies, was reportedly also summoned to security forces headquarters on 9 October and questioned about his demands that the security forces return the Centre's equipment, which they had confiscated at the time of his arrest last June. Dr. Nagib Nagm Eldin, Director of the Amal Centre, was reportedly summoned to security forces headquarters on 10 and 11 October, where he was reportedly interrogated about the Centre's activities by security officers, who informed him that the Centre would be under permanent surveillance for a period of two months, after which they would decide about its future. On 18 October human rights and cultural centres whose activities had been suspended or placed under surveillance were told that they could resume their activities, but that the surveillance would continue.

39. On 11 September, The Khartoum Monitor was reportedly banned for three days, on order of the National Press Council. It is reported that this order was issued because of the publication of articles in August and September judged "harmful" to relations between the North and the South of the country. The Khartoum Monitor had reportedly published statements by a personality in southern Sudan accusing the northerners of having "plundered the South".

40. On 3 September, an evening meeting of some 10 members of the political bureau of the Democratic Unionists Party (DUP) in Khartoum North was reportedly interrupted by some 15 security agents who stormed into the room, rounded up all the participants and detained them for about four hours at what was referred to as "the security headquarters" (the Development and Housing Headquarters in Mohammed Nageeb Street). Reportedly, the detained individuals were interrogated and told that they would not be allowed to exercise any political activities.

C. Respect for human rights and humanitarian law in the conflict

1. The humanitarian context

41. In spite of the major breakthrough represented by the launching on 14 November of the United Nations humanitarian operation in the Nuba Mountains aimed at feeding over 150,000 people from el-Obeid (northern Kurdufan) through food drops in Kauda, Karkar, Julud and Sarat Jamus, denial of access continued to be used as a military strategy by both the Government and the Sudan People's Liberation Movement/Army (SPLM/A), particularly in areas where the population is more needy. Actions such as the denial of permission for flights and visas and the imposition of fees for travel and work permits significantly affected humanitarian action. Affected areas include Upper Nile, where the denial of access is closely linked to widespread insecurity owing to interfactional fighting and to the expanding of oil concessions; the Nuba Mountains, where the amount of humanitarian aid provided is quite insignificant compared to the needs; Eastern Equatoria and southern Blue Nile. Shifting alliances among militia groups make it even more difficult for humanitarian agencies to negotiate access and security-related matters. Overall, the situation has worsened, with more denials, more conditions imposed on humanitarian assistance and more confusion about who is actually in control.

42. Finally, it should be recalled that ceasefires have not been renewed after they had been allowed by both parties to lapse on 15 July 2000.

2. Bombing of the civilian population

43. During his latest mission and afterwards, the Special Rapporteur has continued to receive information relating to bombing incidents. The incidents were reported as follows.

44. On 5 October, 15 bombs were dropped around the airfield in Mangayath, north of Raja, Bahr al-Ghazal, where teams from the World Food Programme (WFP) were distributing relief food. As a result, WFP was forced to suspend its operations for one day.

45. On 6 October, upon WFP resumption of its operation, a total of 15 bombs were dropped directly onto the area where WFP teams were in the process of distributing food to some 20,000 civilians - internally displaced persons from Raja - who had gathered, resulting in civilian casualties.

46. On 8 October, another attack was reported on Mangayath, Bahr al-Ghazal, with 15 bombs dropped by an Antonov plane as a WFP plane prepared to drop food. The United Nations plane had been cleared by the Sudanese authorities. Reportedly, nine bombs fell on the eastern side of the drop site and six on the western side of the village. The attack led the United Nations to evacuate its humanitarian personnel from Mangayath.

47. On 20 November, 17 people died and one person was injured following a bombing incident in Akuem, Bahr al-Ghazal.

48. On 26 November, six bombs were dropped in Malualkon, Bahr al-Ghazal, one of which landed approximately 300 metres from the International Rescue Committee (IRC) compound, hitting it with shrapnel, and approximately 500 metres from Tearfund's Therapeutic Feeding Centre. One woman was killed in the incident and another was injured. In addition, six bombs were dropped 2 kilometres north of Madhol, also Bahr al-Ghazal. One man was killed and a boy injured. It should be noted that Malualkon is a demilitarized area.

49. On 28 November, three villages south-east of Malualkon were bombed. One woman was reported injured near the village of Dhiak.

3. The oil issue

50. Since his first visit to the Sudan in March 2001 and in his interim report to the fifty-sixth session of the General Assembly, the Special Rapporteur has continued to focus on the human rights-related, economic, political and strategic implications of oil exploitation in oil-rich Unity State, supporting the views of those who believe that oil has seriously exacerbated the conflict while deteriorating the overall situation of human rights.

51. More specifically, the Special Rapporteur continued to receive information whereby oil exploitation is continuing to cause widespread displacement, although it remains difficult to cite clear estimates due to the fact that the situation in Upper Nile is extremely fluid and people move constantly. Following discussions during the fifty-seventh session of the Commission on Human

Rights, the Government of the Sudan extended an invitation to the Special Rapporteur to visit the oil area for a direct assessment of the situation on the ground. Lundin Oil also extended a similar invitation to the Special Rapporteur. Accordingly, the Special Rapporteur visited Bentiu, Rubkona and Paryang in Unity State.

52. With a view to complementing and clarifying further the information received in Unity State, the Special Rapporteur travelled to Rumbek, in southern Sudan. Interviews with IDPs both in Rumbek and in Khartoum provided him with further relevant detailed accounts.

53. The Special Rapporteur remains concerned at the lack of transparency on the use of oil revenues. While the Government claimed that these are spent for the development of the South, the Special Rapporteur believes that no convincing evidence has been provided to that effect. In this connection, he wishes to refer to the relevant provisions of the International Covenant on Economic, Social and Cultural Rights.

54. The view was repeatedly expressed that any advantages gained from oil remain volatile unless a peace settlement is reached and that the only way to guarantee the future of the oil industry lies in a negotiated peace agreement.

55. On 7 October, the Special Rapporteur travelled to Bentiu, where he was received by representatives of Lundin Oil and Talisman Energy Inc. and met the Wali of Unity State. He then proceeded to the Dinka village of Paryang, where he visited some of the infrastructure put in place by the oil companies operating locally, including a health centre, and met with local authorities as well as Church representatives. He then travelled to Rubkona, where he met with representatives of United Nations agencies as well as international NGOs. He was informed that the area remains extremely insecure owing to the activities undertaken by local militias.

56. With a view to complementing information received during his trip to Unity State, and in addition to his visit to the IDP camps around Khartoum, the Special Rapporteur felt it necessary to visit the IDPs coming from Upper Nile into southern Sudan and therefore visited two IDP camps around Rumbek. The Special Rapporteur is convinced that, in order to grasp the complexity of the situation, visiting the oil fields is not enough and any thorough assessment must include the collection of testimony from the displaced coming from the region. In this connection, the Special Rapporteur noted that there has been a continuous influx of IDPs, some of whom have stayed in the camps for the past few years while others have just arrived.

57. He was able to interview a number of IDPs who briefed him about their situation and the difficulties they had to overcome. These were almost invariably linked to the situation of conflict characterizing the region. Most of them reported interfactional fighting featuring extensive looting of cattle and burning down of villages. Reports also pointed to bombings by Antonov planes, often followed by attacks by helicopter gunships aimed at clearing the land around the oilfields, particularly since oil installations and assets had been declared legitimate military targets by the SPLM/A. Some of the people had never seen such equipment and, taken by surprise, were easy targets. Others fled with their meagre belongings, or with nothing: some fled naked, and were forced to run for up to a month before reaching a safe haven. It is worth

noting that, when attacked in such circumstances, people fled wherever they could, some to the north, others to the south, and that the argument used by the Government that people move to the north - rather than towards the south - to look for peace is therefore groundless.

58. The plight of these displaced persons in the camps in southern Sudan is desperate owing to the scarcity of means of survival locally and to the fact that they receive very little assistance. The displaced from Upper Nile are Nuer, who are used to living off their livestock. In fleeing, they have lost all their belongings, hence their basic means of survival. Most of them do not work and the only way of earning a living seems to be to cut and collect firewood to sell at the local market.

59. Finally, it is worth noting that access to the area remains extremely difficult since permission to land at most of the airstrips is denied, which also results in lack of human rights monitoring in the region. This issue is particularly relevant as oil exploration is likely to expand to other areas and bring with it a pattern of insecurity.

4. Abduction of women and children

60. As he mentioned in paragraphs 109 and 110 of his interim report, while recognizing that some positive steps have been taken with regard to abductions, the Special Rapporteur is of the opinion that there continues to be a need for a massive advocacy campaign and therefore encourages the Government to take a public stand against abductions and in support of the Committee for the Eradication of Abduction of Women and Children (CEAWC), in line with the commitment expressed by a number of government officials, including the First Vice-President, during consultations held in the framework of the mission.

61. While it is a positive step that the Government has acknowledged the existence of this heinous practice, this is not enough and the Government needs to exercise all its influence on the Murahaleen who are responsible for human rights abuses such as mass killings, torture, rape and abductions.

62. In this connection, the Special Rapporteur noted the commitments made by the Government aimed at stopping abductions and support to the Murahaleen, supporting CEAWC financially and substantially, granting clearance to UNICEF flights used to reunite children with their families and, in particular, prosecuting any person found guilty of new abductions. While welcoming such commitments, the Special Rapporteur will continue to monitor concrete government follow-up action in this respect.

63. During his latest mission, he continued to inquire about the impact of CEAWC. He was informed that progress made in the previous months had continued to be too slow. While this can be partly explained by objective logistical problems and lack of funding, it should also be noted that accountability for the use of resources made available to the Committee has not been transparent, which may have caused some donors to withdraw. It is therefore to be welcomed that the Government has now agreed to have funds accounted for in the regular budget of the Ministry of Justice. It is hoped that this improvement in contribution management will encourage some donors to reconsider their cautious position and continue to provide the

necessary assistance. On the other hand, it is also hoped that the First Vice-President's pledge will provide further financial backing. It remains necessary, however, that the financial support be complemented by a strengthening of CEAWC and the provision of political support by the highest-level authorities in Khartoum.

64. The Special Rapporteur remains concerned, however, at the recurrence of cases of abductions, though in decreasing numbers since March 2001, in Bahr al-Ghazal. It should be noted, however, that the decreasing trend seems to be the result of the improved ability of the SPLM/A to defend villages along the railway line rather than the effect of a strong governmental policy.

D. Women's rights

65. On 2 September 2000, the Governor of Khartoum State, Mazjoub al-Khalifa, issued a decree barring women from working in many public places, saying the ban would uphold Shariah law and maintain the honour of women. During his first visit, the Special Rapporteur had inquired about the decree and had been reassured by Sudanese officials, who had informed him on 10 March that there had been widespread protest against the decree, that the issue might be taken up at the federal level and that, in any case, the law had to be discussed by the National Assembly - which, at that time, had not been reconvened yet.

66. Regarding the possibility that article 19 of the Sudanese Labour Code would be amended along the lines of the above-mentioned decree, on 11 March Sudanese officials reassured the Special Rapporteur that such a possibility had been ruled out.

67. The Special Rapporteur regrets to report information he just received which confirms that, in spite of the reassurances he received and despite the fact that the case had been raised with the Constitutional Court, article 19 of the Labour Code has reportedly been modified along the lines as the Khartoum State Governor's decree.

E. Rights of the child

68. One of the most important aspects relating to the rights of the child in the Sudan is the issue of child soldiers. During his latest mission, the Special Rapporteur inquired about the plight of child soldiers in the Sudan and was fully briefed about the demobilization programme undertaken by UNICEF in southern Sudan. While in Rumbek, he met relevant UNICEF staff who accompanied him to the barracks where he interviewed a number of child soldiers.

69. The Special Rapporteur was informed that the Government is not recruiting children per se and that there did not appear to be any child under 15 in the regular army. However, it should be noted that the Government is allied with tribal militias that make extensive use of child soldiers, for which the Government is taking no responsibility.

70. On the other hand, as regards the situation in southern Sudan, the number of child soldiers has been reported to be 9,000, of whom some 3,500 have been demobilized, in

cooperation with the SPLM/A. The Special Rapporteur hopes that this cooperative effort will serve as a model for child soldiers recruited by the Government-allied militias in the framework of the conflict.

F. Situation in SPLM/A-occupied territories

71. During his first mission, the Special Rapporteur had inquired about the situation in SPLM/A-held territories and had made a number of observations regarding the development of the local civil society and the need for demilitarization of the highly hierarchical structures ruling the country. In his oral presentation to the fifty-seventh session of the Commission on Human Rights, the Special Rapporteur noted that genuine democratic structures were lacking in the areas under the control of the SPLM/A. Internal structures seemed to be military-based rather than grounded in the civil society, which is a crucial condition for the implementation of the right to self-determination. The Special Rapporteur had also been informed that the process of designation of representatives for the National Liberation Council would be finalized by June 2001. Other observations in this regard were reflected in his interim report to the General Assembly (see A/56/336, paras. 57 and 58).

72. Regarding the issue of local elections, the Special Rapporteur held a number of interesting meetings with the leadership of the SPLM/A, the Sudan Relief and Rehabilitation Association (SRRA) and others. He was informed that the elections which had been scheduled for the month of June had been postponed to December 2001-January 2002. During his latest visit, the Special Rapporteur inquired further about this issue, both in his meeting with SPLM/A representatives in Nairobi and in southern Sudan.

73. Overall, the Special Rapporteur confirms that the civil society in southern Sudan is extremely weak and needs strengthening. In this connection, the Special Rapporteur was informed, for instance, that while magistrates have been in charge of the most serious criminal cases since 1991, courts have been established since 1994 - replacing military courts - to deal with civil cases. However, there are reportedly less than 100 trained lawyers in southern Sudan, which also accounts for the weakness of the judiciary. Law enforcement officials are also poorly trained.

74. Human resources experienced in civil administration are lacking. Donor support is scarce, partly because of the political implications that this may have in terms of potentially strengthening the de facto authorities, thus prejudging the future of the country. It should be noted, however, that so far assistance to this end has been provided mostly by the United Nations and non-governmental organizations and that a stronger commitment by the SPLM/A should be expected, with a view to promoting accountability. This is particularly urgent as most of southern Sudan is no longer in a situation of conflict. Sources report that 80-90 per cent of the area is peaceful, opening a window of opportunities for donors to provide development assistance.

75. The Special Rapporteur was also informed that a number of training sessions on good governance had been arranged in the past in Yambio, Western Equatoria, for civil administrators and that further efforts have been undertaken by the New Sudan Council of Churches to help build civil society structures. However, more should be done.

76. In this connection, the Special Rapporteur repeatedly inquired whether any opposition to the SPLM/A exists within southern Sudan. He was informed that internal opposition exists, including within the SPLM/A, but the split - or potential split - factor is considered uncertain as a split would weaken the South vis-à-vis Khartoum, as was the case with Riek Machar and the southern leaders who joined the Khartoum Peace Agreement.

77. It should be taken into account, however, that while the SPLM/A controls access to some 80 per cent of the people in southern Sudan, it does not necessarily represent all of them. If most southern Sudanese are currently united against a common enemy, the potential for inter-ethnic fighting, particularly for the control of resources, is not to be ruled out.

78. The Special Rapporteur continued to inquire about the situation in Eastern Equatoria and the reconciliation between the Dinka and Didinga peoples. He was informed that, following a number of workshops in August-September 2001, an assessment by local Didinga facilitated by the New Sudan Council of Churches concluded that the two tribes were ready for reconciliation. Other sources, however, pointed out that in some areas, including Eastern and Western Equatoria, the SPLM/A is still seen as an occupying army.

IV. CONCLUSIONS AND RECOMMENDATIONS

79. The Special Rapporteur remains of the view that not only does the institutional and legal framework remain basically unchanged, but the overall human rights situation has not improved since the presentation of his interim report to the fifty-sixth session of the General Assembly.

80. The Special Rapporteur noted a number of commitments made by the Government to the European Union on the occasion of the troika mission in December 2001, including his proposal to create an independent, Paris principles-based human rights institution, as well as: (a) the creation of a committee for inter-party liaison in order to foster further democratization, cooperation with other parties and inclusion of opposition forces into the Government at all levels; (b) the implementation of a programme of civic education in democracy; (c) requiring the security forces to operate within the law; (d) the amendment to limiting the National Security Forces Act to the purpose of fighting against terrorism; (e) making genuine efforts to reach a political solution to the conflict; (f) a commitment not to target civilian populations or installations; and (g) granting of access to humanitarian relief operations.

81. The Special Rapporteur also noted that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was brought before the Council of Ministers and that, subject to parliamentary approval, it will be signed in due course.

82. The Special Rapporteur regrets that there seems to be some resistance to acceding to the Convention on the Elimination of All Forms of Discrimination against Women. He encourages the Government to take all necessary steps to sign and ratify the Convention.

83. While welcoming the above-mentioned commitments, the Special Rapporteur will continue to monitor their implementation and will report to the fifty-eighth session of the

Commission on Human Rights on any relevant developments. The Government continues to face a credibility gap between commitments made and follow-up action delivered, which needs to be addressed urgently.

84. The emergency declaration should be lifted and normalization and transition from emergency to democracy should become a matter of urgency for the Government in order to bridge the above-mentioned credibility gap.

85. The amendment to the National Security Forces Act should also be modified. In this connection, the Special Rapporteur reiterates his recommendations contained in his interim report (A/56/336, paras. 113 and 114) and further recommends that a proper judicial review become mandatory for all cases of security detention and that, in keeping with article 14 (5) of the International Covenant on Civil and Political Rights, to which the Sudan is a party, "everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law".

86. The Special Rapporteur regrets that military developments - for which both parties to the conflict are responsible - continued to impact adversely the human rights situation of the civilian population, reiterates his concern at the escalation of military activities in Bahr al-Ghazal, particularly around Raja, and the displacement they caused, and hereby reiterates his appeal to the Government for a halt to the bombing of civilian targets, particularly when civilians gather to collect food.

87. The Special Rapporteur equally condemns SPLM/A practices such as the use of civilian installations for military purposes and the setting up of military installations in close proximity to civilian ones, which contributes to raise the death toll amongst civilians.

88. In light of the above, and bearing in mind the close interaction between human rights and peace, the Special Rapporteur wishes to reiterate the importance of offering a valid alternative to the war which currently is the biggest employer in the Sudan.

89. While as an urgent humanitarian measure unhindered access should be granted to all needy areas, at the political level more serious efforts should be put in place to promote peace and establish democratic structures which are a condition for a lasting peace. In this connection, the Special Rapporteur firmly believes that human rights must be an integral part of the peace agenda and not be confined to the post-war scenario. In addition, the Special Rapporteur wishes to recall that under item 3.6 of the Declaration of Principles the parties agreed that human rights, as internationally recognized, shall form part and parcel of the discussions.

90. As for the grass-roots/people-to-people approach, while acknowledging the decisive role of the New Sudan Council of Churches and its brokering of several successful initiatives, the Special Rapporteur would like to encourage other similar initiatives. In this connection, he wishes to highlight the role of women and their potential for peace, while stressing the urgency of providing development assistance and training to them and other relevant elements of the community.

91. In the same vein, the Special Rapporteur would like to reiterate the relevant recommendations contained in his speech to the fifty-sixth session of the General Assembly. More specifically, the Special Rapporteur encouraged the SPLM to develop genuinely democratic structures, demilitarized and independent from the SPLM hierarchy, based on the fact that a genuine civil society is a crucial condition for the implementation of the right to self-determination. The Special Rapporteur also urged the SPLM to actively take responsibility to meet the needs of the people living in areas under its control, including in terms of health and education, particularly where peace has been established.

92. The Special Rapporteur also reiterates his appeal to donors to continue to invest in peace in the Sudan and to see the phases of peace, reconstruction and development in a more integrated manner, taking into account the multifaceted elements characterizing Sudanese society .

93. As for the oil issue, the Special Rapporteur, while recognizing that oil exploitation has become increasingly important for the economic development of the country, reiterates his strong belief that the right to development cannot justify the disregard of other human rights. The Special Rapporteur believes that oil exploitation is closely linked to the conflict which, although it contains a religious component, is mainly a war for the control of resources and, thus, power. Bearing in mind the adverse impact of the conflict on the human rights situation, he therefore remains convinced that the monitoring of the human rights situation in the oil fields, as well as considering human rights-related, social and economic implications deriving from oil exploitation, including the use of oil revenues, are part and parcel of his mandate as Special Rapporteur on the situation of human rights in the Sudan, which includes both civil and political rights as well as social, economic and cultural rights. He believes that, in the context of the Sudan's right to development, the Government should create an environment conducive to the granting of development assistance, particularly by the World Bank and the International Monetary Fund. In addition, he also remains of the view that any solution will have to be based on a wide consensus among all affected parties.

94. Regarding the programme of technical cooperation of the Office of the High Commissioner for Human Rights (OHCHR), the Special Rapporteur noted the ongoing discussions and will follow any new developments in this field.

95. Finally, the Special Rapporteur would like to acknowledge the support provided by OHCHR in the discharge of his mandate.

Notes

[1] EU-Sudan Joint Communiqué, Khartoum, 9 December 2001, Report on the EU troika mission to Sudan, 7-9 December 2001.

[2] Emergency Order No. 1 suspended articles 56, 57, 59 and 60 (2) and (3) of the Constitution. According to the order, all the walis as well as the legislative assemblies of the states shall continue carrying out their duties. The President is entitled to relieve the walis and appoint acting walis until the emergency period expires.

Annex

Programme of activities of the mission to the Sudan

1. While in Khartoum, the Special Rapporteur held meetings with the following authorities: the First Vice-President, Ali Osman Mohammed Taha; the Ministers of External Relations, Justice, Energy and Mining; the State Minister of the Interior; the Permanent Secretary at the Ministry of Justice; the Head of the Judiciary; the Constitutional Court; the Rapporteur of the Advisory Council for Human Rights; representatives of the Humanitarian Aid Commissioner; the Speaker of the National Assembly and the Head of the Human Rights Committee; members of the Sudanese Bar Association, the Women Union Bar Association Club and the Sudanese Jurists Union.

2. In Khartoum, the Special Rapporteur also met representatives of domestic and international NGOs, heads of United Nations agencies, the head of delegation of the International Committee of the Red Cross (ICRC) and representatives of the diplomatic and donor community. The Special Rapporteur further met with representatives of the Sudan Council of Churches, representatives of political parties of the opposition, including a meeting with Umma leader al Sadig al-Mahdi and PNC leader Hassan al-Turabi, lawyers, journalists, students and women's groups. In addition, the Special Rapporteur received direct testimony from individuals concerning alleged violations of human rights.

3. The Special Rapporteur also visited the Waad al-Bashir IDP camp and a community centre of the Sudanese Environment Conservation Society in Haj Yousef Al-Wihda, near Khartoum.

4. On 7 October, the Special Rapporteur undertook a one-day trip to Bentiu, Rubkona and the Dinka village of Paryang in Unity State, where he visited some of the facilities put in place by the oil companies operating in the area, held discussions with representatives of Talisman Energy Inc. and Lundin Oil, and met with the Wali of Unity State, representatives of United Nations agencies and international NGOs.

5. On 9 October, the Special Rapporteur met with the Rapporteur of the Advisory Council for Human Rights for a wrap-up session during which a number of individual cases were brought to the attention of the Sudanese authorities for their follow-up action.

6. From 9 to 14 October, the Special Rapporteur travelled to Nairobi and Lokichokio, Kenya, to access southern Sudan. In Nairobi, he met with the Commissioner for Information, Dr. Samson Kwaje, the Commissioner for Education, Mr. Kosti Manibe, the Sudan Relief *and Rehabilitation* Association (SRRA) Liaison Officer in Nairobi, Mr. Aloisio Emor Gitulk, the Commissioner for Agricultural and Animal Resources in Yei, Mr. Bandindi Pascal Uru, the Commissioner for Finance and Economic Planning, Mr. Arthur Akuien, the Economic Commissioner, Kuol Manyang Juuk, the Acting SPLM representative for Kenya, Mr. Edward Lino, and the Commissioner for Civil Society, Mr. Lual Ding, as well as other SPLM representatives.

7. On 9 and 10 October, while in Nairobi, the Special Rapporteur also met with representatives of the New Sudan Council of Churches, the Nuba Relief and Rehabilitation Development Organization, United Nations agencies and NGOs under the umbrella of Operation Lifeline Sudan (OLS), non-OLS NGOs, the ICRC and representatives from the diplomatic community.

8. On 11 October, while in Lokichokio, the Special Rapporteur held consultations with OLS personnel, including international and local NGOs.

9. On 12 October, the Special Rapporteur travelled to Rumbek, Lakes State, southern Sudan, where he discussed human rights and civil administration structures with representatives of civil authorities and the military, including the executive director of the SRRA, Mr. Elijah Malok, the deputy executive director of the SRRA, the deputy regional SPLM secretary (governor) for Bahr al-Ghazal State, the representative of the security forces, the SPLM county secretary for Yrol County and the secretary for Rumbek. In addition, he held consultations with representatives of the diocese of Rumbek and the judiciary (members of the Court of Appeal).

10. He also met with representatives of United Nations agencies and NGOs working in Rumbek; he visited a demobilized child soldiers transit camp as well as two IDP camps (Deng Nhial) where he interviewed a number of people coming from Upper Nile.

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Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the Democratic Republic of the Congo

Note by the secretariat

1. The secretariat has the honour to inform the Commission on Human Rights that, following the resignation of Mr. Roberto Garretón in November 2001, Ms. Iulia Antoanella Motoc (Romania) was appointed Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Democratic Republic of the Congo on 28 November 2001.

2. In view of her late appointment and the scheduling of her first mission to the Democratic Republic of the Congo for February 2002, the Special Rapporteur will not be in a position to make a full report to the Commission at the present session. Upon completion of her mission she plans to make an oral presentation to the Commission.

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Fifty-eighth session
Agenda item 9

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the Democratic Republic of the Congo

Note by the Secretariat

1. In its resolution 2001/19 entitled "Situation of human rights in the Democratic Republic of the Congo", the Commission on Human Rights requested the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo and the Special Rapporteur on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances to carry out, as soon as security considerations permit and, where appropriate, in cooperation with the National Commission of Inquiry to investigate alleged human rights violations and breaches of international humanitarian law in the Democratic Republic of the Congo (formerly Zaire) between 1996 and 1997, a joint mission to investigate all massacres carried out on the territory of the Democratic Republic of the Congo, including those in the province of South Kivu and other atrocities referred to in the most recent and in previous reports of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, with a view to bringing to justice those responsible, and to report to the General Assembly at its fifty-sixth session and to the Commission at its fifty-eighth session.

2. In view of her late appointment on 28 November 2001, the new Special Rapporteur, Iulia Antoanella Motoc, will not be able to submit to the Commission the written report it requested. She will, nevertheless, discuss the matter with the Special Rapporteur on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances with a view to giving an update on the situation of the joint mission at the time of the oral presentation of her report to the Commission on Human Rights.

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